No. 4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL., APPELLANTS,

v.

S. B. STREET, ET AL., APPELLEES

On Appeal from the Supreme Court of Georgia

BRIEF FOR THE APPELLANTS

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No. 258

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v.

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OPINIONS BELOW

The opinion of the Supreme Court of Geor
first appeal, *sub nom. Looper* v. *G. S. & F.*
reported in 213 Ga. 279, 99 S.E. 2d 101; a copy is
to the Jurisdictional Statement as Appendix
The opinion of the Supreme Court of Georgia
ond appeal is reported in Ga. , 108 S.
a copy is appended to the Jurisdictional Sta
Appendix B thereto, and appears in the printed

page 249. A copy of the "Findings, Conclusions, Order, Judgement and Decree" of the Superior Court of Bibb County, Georgia, which was affirmed by the decision appealed from, is not reported, is appended to the Jurisdictional Statement as Appendix C thereto, and appears in the printed Record at page 101.

JURISDICTION

This action was brought in the Superior Court of Bibb County, Georgia, by certain employees of the Southern Railway Company and one of its subsidiaries to enjoin that company and all its subsidiaries (comprising the Southern Railway System) and the appellant labor unions from performing union-shop agreements entered into by the said railroad companies and the said unions pursuant to Section 2, Eleventh of the Railway Labor Act (Act of Jan. 10, 1951, c. 1220, 64 Stat. 1238, U.S.C. tit. 45, sec. 152, Eleventh), and, among other items of relief, to declare said section 2, Eleventh unconstitutional and ineffective to supersede state law. The judgment of the Supreme Court of Georgia was entered May 8, 1959 (R. 270), Notice of Appeal was filed in that Court on June 5, 1959 (R. 271), the Jurisdictional Statement was filed in this Court on July 30, 1959, and probable jurisdiction was noted October 12, 1959 (R. 276).

In the trial court appellants relied on the authority of Section 2, Eleventh of the Railway Labor Act as supporting the validity of the union-shop agreements under attack and the repugnance of state law to the federal law. (R. 62, 77-8, 94-5, 95-6.) The individual appellees prayed for a decree declaring the federal law unconstitutional, and such prayer was granted. R. 83, 106. There was thus "drawn in question the validity of a . . . statute of the United States," as provided in Section 1257(1), title 28, U.S.C. The individual appellees also relied on state law determining the validity of the agreements involved although said law was repugnant to the federal law. R. 78, 79. Thus there was "drawn in question the validity of a

statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity," as provided in section 1257(2).

QUESTIONS PRESENTED

The following questions are presented by this appeal:

1. Whether the Supreme Court of Georgia erred in holding the union-shop amendment to the Railway Labor Act (as amended, sec. 2, Eleventh, Act of Jan. 10, 1951, 64 Stat. 1238, U.S.C. tit. 45, § 152, Eleventh) unconstitutional and invalid.

2. Whether the Supreme Court of Georgia erred in holding that union-shop agreements entered into pursuant to the Railway Labor Act are unconstitutional and invalid.

3. Whether the Supreme Court of Georgia erred in holding Georgia law and the laws of other States valid and applicable to union-shop agreements between a carrier subject to the Railway Labor Act and the duly designated representatives of its employees, despite the acknowledged repugnance of such law so applied to section 2, Eleventh of the Railway Labor Act and its claimed repugnance to the Constitution of the United States by reason of Congressional preemption of the field.

4. Whether the Supreme Court of Georgia erred in affirming a judgment permanently enjoining the performance of union-shop agreements subject to and in compliance with the Railway Labor Act.

5. Whether the Supreme Court of Georgia erred in holding that the use, by a union having a union-shop agreement, of a part of its dues receipts for purposes other than the negotiation and administration of collective bargaining agreements concerning rates of pay, rules and working conditions, or wages, hours, terms or other conditions of employment, violates constitutional rights under the

First and Fifth Amendments of employees subject to such union-shop agreement.

6. Whether the Supreme Court of Georgia erred in holding that the decision of this Court in *Railway Employes' Dept.* v. *Hanson*, 351 U.S. 225, is inapplicable where it is found that a union having a union-shop agreement spends part of its funds for political and legislative purposes.

7. Whether the appellants were denied due process of law by the holdings of the Supreme Court of Georgia:

(a) That the procedural rulings of the trial court did not deny appellants a fair opportunity to defend this action.

(b) That a class action may properly be brought on behalf of persons whose membership in the class is determined by ascertaining a combination of mental attitudes of each person.

(c) That the plaintiffs in the trial court had standing to sue unions not the collective bargaining representative of the class in which they are employed, with respect to collective bargaining agreements not affecting the plaintiffs.

(d) Sustaining the same findings of fact with respect to all the union defendants despite the substantial difference in the evidence with respect to the several union defendants.

(e) Sustaining findings of fact not supported by any evidence.

STATUTES INVOLVED

Section 2, Eleventh of the *Railway Labor Act*, as amended by the Act of January 10, 1951, c. 1220, 64 Stat. 1238, U.S.C., Title 45, Sec. 152, Eleventh:

"Eleventh. Notwithstanding any other provision of this Act, or of any other statute or law of the United States, or Territory thereof, or of any State

any carrier or carriers as defined in this Act and a labor organization or labor organization duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted—

"(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: *Provided*, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

"(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership: *Provided*, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

* * * * * * * * *

"(d) Any provisions in paragraph Fourth and Fifth of section 2 of this Act in conflict herewith are to the extent of such conflict amended."

Georgia Code, ch. 54-9, sections 54-901 through 54-904:

"54-901 Definitions.—When used in this Chapter—

"(a) The term 'employer' includes any pers
ing in the interest of an employer, directly o
rectly, but shall not include the United States,
State, or any political subdivision thereof,
person subject to the Railway Labor Act, as an
from time to time, or any labor organization
than when acting as an employer) or any one
in the capacity of officer or agent of such lab
ganization.

"(b) The term 'employee' shall include an
ployee, and shall not be limited to the employ
a particular organization.

"(c) The term 'employment' means employm
an employer as defined in this Chapter.

"(d) The term 'labor organization' means a
ganization of any kind, or any agency or em
representation committee or plan, in which emp
participate and which exists for the purpose, in
or in part, of dealing with employers concerning
ances, labor disputes, wages, rates of pay, ho
employment or conditions of work.

"54-902. Membership in labor organization
dition of employment.—No individual shall
quired as a condition of employment, or of con
employment, to be or remain a member or an
of a labor organization, or resign from or to
from membership in or affiliation with a labor
zation.

"54-903. Payment to labor organization as
tion of employment.—No individual shall be re
as a condition of employment, or of continuance
ployment, to pay any fee, assessment, or othe
of money whatsoever, to a labor organization.

"54-904. Contracts requiring membership
payments to, labor organizations as contrary to
policy.—Any provision in a contract between
ployer and a labor organization which require
condition of employment, or of continuance
ployment, that any individual become or rem
member or an affiliate of a labor organization,
any individual pay any fee, assessment, or oth

of money whatsoever, to a labor organization, is hereby declared to be contrary to public policy of this State, and any such provision in any such contract heretofore or hereafter made shall be absolutely void."

Constitution of the United States, Article VI, cl. 2:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; * * * shall be the supreme law of the Land * * *"

STATEMENT

The Parties

The labor union appellants, who are the real parties in interest as appellants, are standard railway labor organizations which have at all material times been the collective bargaining representatives of their respective crafts or classes of employees of the Southern Railway. R. 169-71. They represent those employees commonly referred to as the "non-operating" employees of the carriers. Apart from some unproven allegations in the complaint as amended, there is nothing in the record to show the identity, relationship, or conduct of any of the individual defendants.

The railroad company apellees are common carriers by railroad subject to the Interstate Commerce Act; as such, they are "carriers" within the meaning of and subject to the Railway Labor Act. R. 198.

At the time of the trial, there were six petitioners or intervening petitioners (now appellees), all employed within the craft or class of clerk,* five by the Southern Railway Company and one by the New Orleans and Northeastern Railroad Company. R. 5, 16, 202-4. Those carriers and seven other cariers were named as defendants and are subject to the final order. R. 1-2, 105. One of the individual appellees is a resident of and employed in Mississippi, one is a resi-

* The record shows that three of the individual appellees are employed in the craft or class of clerks (R. 5, 72-4, 106, 203-4) and does not contain proof of the craft in which the other three are employed; in fact, all six are employed in that craft. See R. 90, 92, 106.

dent of and employed in the District of Columbi
remaining four are residents of and employed i
R. 71-4. All are represented for purposes of coll
gaining by the Brotherhood of Railway and
Clerks, Freight Handlers, Express and Station
They purport to sue on behalf of all employees
the Southern Railway companies represented in
bargaining by any of the appellant unions, resid
various states in which the Southern operates
unions were enjoined in the final order entered a
below. R. 105.

The Union-Shop Agreements and the Railway Labo

By the Act of January 10, 1951 (set forth ab
gress amended the Railway Labor Act so as no
prohibit all forms of union-security agreemen
stead to permit union-shop agreements subje
limitations and conditions prescribed by the s
was specifically provided that such agreements
permitted "Notwithstanding any other provisio
Act, or of any other statute or law of the United
Territory thereof, or of any State". Thereafte
road companies entered into union-shop agreem
the appellant unions in the terms of the 1951 ame
the Railway Labor Act, complying with all the
and incorporating all the limitations required b
The agreements provide that they shall be separ
ments between each carrier and each labor org
R. 214. The agreements require (subject to cert
tions and limitations not relevant here) that all
covered by the basic collective bargaining agre
tween the carrier and the union, as a condition of
tinued employment, become members of the un
senting their craft or class within 60 days after
ning of such employment or after the effective da
agreement, whichever is later. R. 205-6. Howeve

condition of employment applies to any employee to whom membership is not available on the same terms and conditions as are generally applicable, nor to any employee who might be denied membership or whose membership might be terminated for any reason other than failure to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership. R. 207-8.

There is no contention that the agreements in any way exceed the authority which the statute, if valid and effective according to its terms, confers. The union-shop agreements involved here, except for the names of the parties, are identical with the union-shop agreement before the Court in *Railway Employes' Dept.* v. *Hanson*, 351 U.S. 225.

Procedural Matters

The individual appellees chose not to comply with this condition upon their continued employment by the Southern. Instead they brought, or intervened in, this action, seeking to enjoin the enforcement of the union-shop agreements, claiming that the agreements violated their rights under the Constitution of the United States and under the so-called "right-to-work" provisions of the statutes of Georgia and the laws of other states. R. 9-13, 78-82.

As finally amended, the petition alleges that the union-shop agreements entered into between the defendant labor organizations and the defendant railroads are illegal, unconstitutional, and void, and in direct violation of the Georgia right to work laws (Code Ann. Supp., Sec. 54-801 through 54-908, Ga. L. 1947, pp. 616-621), Georgia public policy, the laws and public policy of other states served by the defendant railroads, the First, Fifth, Ninth, and Tenth Amendments to the Constitution of the United States, and certain sections of the Constitution of the State of Georgia. R. 78-82. It further alleges that the initiation fees, periodic dues, and assessments which the petitioners would be re-

quired to pay under the union-shop agree
used in substantial part for purposes not g
tive bargaining but to support ideological
trines and candidates which they are not w
and cannot lawfully be forced to support, t
petitioners' constitutionally guaranteed ri
of association, thought, liberty, and prope
78-82. It was further alleged that the u
ments, and Section 2, Eleventh of the Rai
(45 U.S.C.A. Sec. 152, Eleventh) to the e
thorizes such union-shop agreements, are
first, Fifth, Ninth, and Tenth Amendment
tution of the United States. R. 82, 83.

The action was commenced in June, 19
to the federal court, and remanded in Janu
8, 57-8, 219.

Appellants promptly filed a motion to
plaint as theretofore amended on the grou
to state a cause of action. R. 219. At the
motion the individual appellees offered furt
to the petition to add allegations that the
assessments which would be required unde
agreement would be used in substantial p
not germane to collective bargaining but
logical and political doctrines and candid
were not willing to support. R. 59, 219.
accepted the amendments, treated the moti
directed to the complaint as so amended, a
granted the motion and dismissed the
ground that this Court's decision in *Rai*
Dept. v. *Hanson*, 351 U.S. 225, had adjudic
tions of the petitioners adversely to their p

On appeal to the Supreme Court of Geo
reversed the trial court (R. 221) in what
the most intemperate opinions ever issued
judicial tribunal. 213 Ga. 279, 99 S.E. 2d 1
to Jurisdictional Statement. In essence, a

this Court and the Congress, for perverting the inter
of the Founding Fathers, it held that it need follow
Court's ruling in the *Hanson* case only with respect t
precise ruling, and not with respect to any implica
except insofar as implications adverse to these appe
might be extracted from certain language in the *Ha*
opinion. The Supreme Court of Georgia was of the
that apparently this Court did not appreciate that u
engage in legislative and political activities, and was
further view that certain language in the *Hanson* op
could be interpreted to reserve decision on the con
tionality of Section 2, Eleventh of the Railway Labo
in permitting union-shop agreements by unions that e
in such activities.

After remand to the Superior Court of Bibb Co
appellants were subjected to a host of astonishing an
pressive procedural rulings, described in Appendix A
of, which they claimed deprived them of a fair opport
to defend this case. After ultimate trial proceeding
Superior Court entered the order attached to the J
dictional Statement as Exhibit C (R. 101-7), decl
section 2, Eleventh unconstitutional insofar as it perm
the union-shop agreements, enjoining the enforceme
those agreements, and holding the law of Georgia
other states effective and applicable to such agreem
despite the declaration in section 2, Eleventh that Con
preempted the field and superseded state law. On a
to the Supreme Court of Georgia, that Court affirme
order of the trial court. R. 249, 270.

The Evidence

It is obviously impossible to summarize all the evi
within reasonable bounds. More than 600 exhibits,
of them voluminous, were introduced, and additiona
terial was read into evidence over a period of four
The type of evidence upon which plaintiffs stated they
cipally relied is as follows.

The labor organization defendants curr
odic dues ranging from $2 per month to $
have initiation and reinstatement fees ra
to $50 except that in the case of two of said
initiation fee and reinstatement fee is $2
spectively. R. 171-5.

All the defendant unions are affiliated w
Federation of Labor-Congress of Industri
and pay to it 5¢ per member per month.
in the activities of that organization ar
suade legislative bodies to enact or not t
legislation. R. 127, 131, 177. It also has
Political Education" (COPE). R. 122, 13
of that Committee are financed in part by
to it by the AFL-CIO and in part by co
licits from individuals. R. 122-32, 137. The s
tions are kept in an "individual contribu
are used principally for contributions t
public office. R. 137, 141-2. The prepond
dates receiving such contributions are c
same major political party. R. 197. Th
from the AFL-CIO are deposited into t
Fund" and are expended principally for t
information concerning political matters;
penses of publication of political matter
urging the support of particular candida
funds to be available for such support, a
the individual contributions fund. R. 122-3

Railway Labor Executives' Association
chief executive officer of the defendant lab
and eight other labor organizations not d
case. R. 179. All the affiliates contribute o

* The Masters, Mates, and Pilots, which re
ployees of the Southern, and the Marine Engin
sociation, which represents one employee. N
employees is suing.

basis to the support of the activities of that organiz
R. 180-1; P. Exh. 430. The purpose of that organiz
is to "maintain cooperative action and coordinated p
on all matters of mutual interest and importance to
way labor." P. Exh. 430, p. 1. A principal activity of
organization is in the field of federal legislation, wh
attempts to influence legislation in which the Chief E
tives who are members of Railway Labor Executives'
ciation deem the members of their organizations hav
interest. R. 179. It also contributes to the "educat
fund" of Railway Labor's Political League (RLPL)
cussed below. R. 184.

That League is an organization composed of ma
the individuals who are members of Railway Labor E
tives' Association, and certain other persons who ar
cials of railway labor organizations not defendants i
action. R. 182. It was organized to encourage ra
workers to exercise their voting rights and to inform
of the position and records of candidates for public
on problems of railway workers. P. Exh. 431. Like CO
also has an educational fund and a "free" fund; the fo
is used for the dissemination of information and the
principally for contributions to candidates for feder
fice. R. 182, 184. Also, as in the case of COPE, the
ponderance of its contributions to candidates for p
office have been to candidates of the same major po
party. R. 197. In addition to the contributions from R
into its educational fund, it has received contribution
that fund in substantial amouts from four of the
organization defendants and in insignificant amounts
three other of the labor organization defendants. R
4. In addition, numerous contributions into that fund
received from local lodges of various of the labor orga
tion defendants. Some voluntary contributions from
viduals also were deposited into said fund. R. 184.

All but two of the labor organization defendants, an

railway labor organizations that are not
the owners of a weekly newspaper "Labo
newspaper is devoted primarily to news
matters. P. Exhibits 109-49, 168-228. It
contributions of a dollar to the funds of R
R. 189. A substantial portion of its space is
lative matters and, during election periods
jects dealing with the election of candidate
R. 189, par. 49. It also, during general ele
publishes special editions in support of
dates for public office; for example, during
election campaign it published 16 such sp
distribution in the State or District of 1
190; Exhibits 150-2, 154-67. Labor deri
financial support from subscriptions. R.
labor organization defendants, except on
scriptions, constituting a substantial pro
"Labor's" revenues, for officers and mem
fendants; the record does not show which
purchase subscriptions for all their me
them purchase subscriptions by individual
which of them purchase subscriptions onl
189.

Each of the labor organization defendan
a monthly journal. R. 199. Those journa
other contents, sometimes include suggesti
tions to RLPL or COPE, as well as sugge
butions to other organizations such as th
Heart Fund, etc. See. e.g., P. Exhibits 2
37; 283, pp. 49, 50; 269, p. 34; 270, p. 33; 2
302, p. 185; 337; Dfts. Exhibits 30, 58, 62, 6
also report the recommendations of RLP
for federal office. Exhibits 283, p. 9; 284, p
325; 380, p. 8.

Some local lodges of some of the la
defendants engage directly in legislative
cept in the six States in which there is restr

support candidates for public office in the State or loc
of the local union. R. 176-7 (par. 20), 191. The record
not show whether any of such local lodges are lodge
which any of the plaintiffs or any member of the purpo
class they represent would pay any funds pursuant to
union shop agreements.

The "Findings, Conclusions, Order, Judgment and Decree"

The trial court found this case to be a class action
found the class to consist of "all non-operating emplo
of the railroad defendants affected by, and opposed to
hereinafter referred to union shop agreements, who
are opposed to the collection and use of periodic du
for challenged purposes. R. 191. The appellants obje
on the ground, among others, that a "class" in litiga
cannot consist of persons whose identity is determine
ascertaining, or trying to ascertain, whether or not
entertain a combination of mental attitudes. R. 229-30.
trial court found also that the labor organization def
ants entered into the union shop agreements "wit
authority from the employees represented by them".
230.

The trial court found that the labor organization def
ants used funds collected from the plaintiffs and the
ported class "to impose upon plaintiffs and the class
represent, as well as upon the general public, conform
to "certain political and economic doctrines, concepts
ideologies" and conformity to "legislative programs",
the labor organization defendants excepted on the gr
that there is nothing in the record to show that any o
union defendants imposed on anyone conformity to
doctrines, concepts, ideologies, or legislative program
233. The trial court found that the union shop agreem
are contrary to the constitution, law, and public polic
the State of Georgia and contrary to the statutes or la
other States in which the defendant railroads operate.

exception was made on the ground that the law and public policy of Georgia specifically does not prohibit such agreements, that the statutes or law of other States were not proven, and that in some States in which the defendant railroads operate the specific union shop agreements here involved have been held to be lawful. R. 234-5. A similar conclusion was made with respect to the union shop agreements violating the federal Constitution; the court held that the union shop agreements and their enforcement invade plaintiffs' personal and property rights, including freedom of speech, freedom of press, freedom of thought, freedom to work, and their political freedom and rights. R. 104, 235.

The trial court found that the injury to the plaintiffs from the complained of conduct would be irreparable but made no such finding with respect to the members of the purported class. R. 104 (par. 9), 236. The union defendants objected on the ground that there was nothing in the record to support a finding of irreparable injury, especially in view of the fact that the greatest amount of damages claimed by any plaintiff for being required to pay initiation fees and dues for a period of five years was $158.25. R. 236.

The trial court found that the labor organization defendants had so commingled their funds that it was impossible to ascertain what portion of the dues collected by the defendant labor organizations was used for the complained of purposes and activities, and the union defendants excepted on the ground that there was nothing in the record to show what accounts were kept by said defendants or to show whether it would be impossible or difficult to ascertain what amounts they expend for particular purposes. R. 104, 236.

The trial court entered an order and decree perpetually enjoining the defendant railroads, the defendant unions, and the individual defendants from enforcing the union shop agreements and from discharging the petitioners, or

any member of the class they represent, for refusing to become or remain members of, or pay periodic dues, fees, or assessments to, any of the labor union defendants. R. 105-6. The court further found and declared that the plaintiffs were entitled to the return of all periodic dues, fees, and assessments which they had paid to the labor union defendants pursuant to the terms of the union shop agreements and entered judgment against the defendant Brotherhood of Railway and Steamship Clerks in favor of the plaintiff Hazel E. Cobb in the sum of $158.25; in favor of the plaintiff J. H. Davis in the sum of $133.50; and in favor of S. B. Street in the sum of $151.50 for the fees and dues they had paid for a period of over five years. R. 106.

The court further entered a declaratory judgment finding and declaring Section 2, Eleventh of the Railway Labor Act (45 U.S.C. 152, Eleventh) to be unconstitutional to the extent that it permits, or is applied to permit, the exaction of funds from plaintiffs and the class they represent, for the complained of purposes and activities. R. 106.

The court likewise entered a declaratory judgment finding and declaring that the enforcement of the union shop agreements is illegal in that it deprives plaintiffs, and the class they represent, of personal rights guaranteed by the Constitution of the United States and the laws and policy of the State of Georgia and other States. R. 106.

The court also decreed that its order operated "as an adjudication of the basic common rights asserted by plaintiffs on their own behalf and on behalf of other employees of the defendant railroads." R. 107.

The only limitation on the order is a proviso "that said defendants [all the defendants, including the railroads and the individuals] may at any time petition the court to dissolve said injunction upon a showing that they no longer are engaged in the improper and unlawful activities described above." R. 106, 239-40.

SUMMARY OF ARGUMENT

In the absence of a constitutional, statutory, or contractual provision to the contrary, an employer may discharge an employee for any reason, such as the failure of the employee to join a union, and the employer may do so either *sua sponte* or because it has contracted to do so. At common law a union-shop agreement was valid.

The federal constitution imposes no limitations on railroads or unions; it imposes limitations only on the federal and state governments. No contractual provision prevents the termination of plaintiffs' employment for not belonging to a union; the only contractual provisions are to the contrary. The only question therefore is whether there is some statutory or common law principle that prevents the application of the union-shop agreements to plaintiffs.

A union-shop agreement is lawful under Georgia statutory and common law. 160 A.L. R. 918. The only common law cases in Georgia assumed the validity of such agreements. And they must have been valid at common law else there would have been no need for Georgia to enact its so-called "right-to-work" law. But that statute specifically excludes the railroad industry from its substantive provisions. Georgia Code 54-901(a). The Georgia courts have not held to the contrary. The validity of union-shop agreements was never conditioned on the use made of dues secured by conditioning employment on union membership.

The enactment of section 2, Eleventh of the Railway Labor Act was constitutional action by Congress. So far as here pertinent it consisted of but two provisions. First, it repealed the prior federal prohibition of a union shop in the railroad industry, and the validity of such repeal cannot be and is not questioned. Second, it provided that state law should not apply to the subject of the type of union-security agreements that Congress had theretofore prohibited and thereafter ceased to prohibit. Plaintiffs argue that Congress unconstitutionally superseded state law be-

cause but for such superseding they would be protected by state right to work laws against being required to pay union dues a part of which gets spent for certain purposes. They concede that the Georgia right-to-work law excepts the railroad industry, but argue that such laws in other states have no such exception, that Congress could not validly supersede such other laws, and the union-shop agreement could not be invalid in some states and valid in others —without explaining why this is so.

We submit it is clear that Congress may validly supersede state law on any subject on which Congress may legislate, and it may legislate on union-shop agreements in the railroad industry. The only issue heretofore raised in such situation is whether Congress intended to supersede, not whether it could supersede state law where it could legislate. Here there is no question of intention; Congress expressly said it intended to supersede. In such situation it is the Supremacy Clause that ousts the state law, and that Clause cannot be unconstitutional.

Section 2, Eleventh intentionally imposes no limitation on the purposes for which dues collected under a union-shop agreement may be spent. Efforts to insert such limitations were unsuccessful. And all courts have agreed that such was the intention.

In *Ry. Employees Dept.* v. *Hanson*, 351 U.S. 225, this Court reversed the Supreme Court of Nebraska for holding section 2, Eleventh unconstitutional because it permitted union-shop agreements under which dues could be required part of which was used for purposes other than collective bargaining. All the basic facts in this case were present in the *Hanson* case, and the same arguments were made. There is no contention in this case that plaintiffs are required by the union-shop agreements to do anything other than pay uniform dues and fees to be in compliance. And even apart from the *Hanson case*, an employee has no constitutional right to work for a specific employer without

having his dues used in part for political or legislative
poses with which he disagrees. The fact that unions eng
in such activities does not require that all who contri
to its funds agree with the union objectives. The nume
cases sustaining the validity of state requirements of
integrated bar are typical of this proposition.

Furthermore, legislative and political activities are
mane to collective bargaining. Especially in the railr
industry, many of the most vital conditions and benefit
employment are determined by legislation or strongly i
enced by legislative and political results. The detail
this are extensive.

The holdings below deprived appellants of due proce
several respects. Apart from the procedural matters
cussed in Appendix A, many of the findings on which
judgment rests have nothing whatever in the record
support them. Other findings are the result only of ran
speculation, and still others are applied to all the defen
unions although the record explicitly shows that they c
be true only of some few of them, in many cases an unsp
fied few. Such findings are not the result of true judi
process. Further, by making the judgment operative w
ever the Southern operates, the judgment below overr
in effect the decisions of the courts of other states w
have held these very union-shop agreements valid in t
jurisdictions. The courts of Georgia have no such
thority.

Another deprivation of due process was entering
judgment in favor of an amorphous "class" the compon
of which cannot be determined without reading their m
and thus subjecting appellants to contempt for conduct
could not have known would violate the injunction w
they engaged in it. The sustaining of a class action fur
denied appellants due process by subjecting all but on
them to suit by persons who had no standing to sue t
that is, by persons not affected by anything any but on
the appellants has done or might do.

ARGUMENT

I. INTRODUCTION

Before directing our attention to the merits of this case, it may be profitable to review certain basic legal principles in the light of which the more important issues in this case, and their proper resolution, stand out more clearly.

At common law, in the absence of constitutional or statutory or contractual provisions, an employer may terminate the employment of his employee for any reason or for no reason, no matter how reasonable, unreasonable, or whimsical. Thus, in the absence of a constitutional or statutory or contractual provision, an employer, even a railroad employer, may terminate the employment of an employee because the employee belongs to a union or because he does not belong to a union or for any other reason. Since an employer under such conditions is thus free to impose any condition of employment he sees fit, he may impose any condition because he has agreed with someone else that he would do so. The basic question thus gets reduced to a consideration of whether there is any constitutional or statutory or contractual provision which limits the right of any of the railroad company defendants to terminate the employment of any of the plaintiffs or anyone else in their employ.

Certainly there is nothing in the federal Constitution which limits the right of a railroad to terminate the employment of any of its employees for any reason. Apart from certain procedural or adjective provisions, such as qualification to hold the office of President or Congressman, etc., the Constitution consists of a grant of certain powers to the federal government and restrictions on conduct of the federal or State governments. Nothing in the Constitution limits what conduct may be engaged in by a railroad, such as terminating the employment of an employee for such reason as is sufficient to the railroad.

Nor may any contractual provision be pointed
ing the right of any of the railroad defendants
nate the employment of any of its employees fo
longing to a union. On the contrary, the only co
provision relevant to any such question requires
road to terminate employment for such reason.

We thus come to a consideration of statutory o
law principles that may limit the right of a railro
minate employment for non-membership in
whether such condition of employment is impos
railroad *sua sponte* or because it has agreed to im
condition of employment.

II. A UNION SHOP AGREEMENT IS A LAWFUL AG UNDER COMMON LAW AND GEORGIA STATUTOR

In 1947 Georgia enacted its so-called "right
law. Georgia Code, Chapter 54-9. That statut
employers from imposing as a condition of empl
continued employment membership or non-memb
a labor organization.

But the Georgia Right-to-Work Law specifically
the interstate railroad industry from its provision
Code 54-901 provides:

> "Definitions.—When used in this Chapter—
>
> (a) the term 'employer' * * * shall not incl
> any person subject to the Railway Labor
> amended from time to time * * *"

All the railroads here are subject to the Railw
Act (45 U.S.C. 151, *et seq.*). R. 198. Therefore n
relief sought in this suit can properly be or is pr
any provisions of the Georgia Right-to-Work L
Georgia statute not only expressly excludes the d
from its provisions but in effect declares the pol
State of Georgia to refrain from applying state
subject of contracts making employment rights i

way industry conditional upon union membership and to leave such matters to federal law. The exemption from the Right-to-Work Law of railroads covered by the Railway Labor Act, as amended from time to time, expresses the policy of the State of Georgia that the necessity of uniformity of law governing union security issues on the railroads outweighed any state policy with regard to union security. Apparently the Georgia legislature recognized that the harmful consequences of trying to apply forty-eight different state laws to railroads and airlines were greater than any allegedly undesirable aspects of union shop agreements.

The courts below made no reference to the Georgia Right-to-Work law. Nor did they indicate in any respect what Georgia law or policy they were referring to when they found that the practices here involved violated Georgia law.

While it is apparent that the only fair construction of the exemption from the Georgia Right-to-Work Law of carriers subject to the Railway Labor, Act, is that Georgia recognized the need for uniformity throughout the country rather than a patchwork of varying state laws, if the exemption is regarded as leaving state common law applicable, the same result follows in this case since union shop agreements were valid in Georgia at common law. For Georgia cases involving union shop or closed shop contracts, in which the court treated the contract as valid without any point even being made that these provisions were in any respect subject to question, see *Savage* v. *Western Union Telegraph Co.*, 1945, 198 Ga. 728, 735-736, 32 S. E. 2d 785, 789-790; *Jones* v. *Hearst Consolidated Publications*, 1940, 190 Ga. 762, 10 S. E. 2d 761. Compare *Rainwater* v. *Trimble*, 1950, 207 Ga. 306, 61 S. E. 420.

Indeed the fact that Georgia found it necessary to enact a Right-to-Work Law, especially since it made it applicable to contracts theretofore entered into (Ga. Code Sec. 54-

904), constitutes a recognition that union s
were valid at common law in Georgia.

There can be no question that at comm
more recently, union-shop and closed-shop
valid. *Hudson* v. *Atlantic Coast Line R. C*
657, 89 S. E. 2d 441, 446; 31 Am. Jur. 876
Restatement of the Law of Torts, vol. I
A.L.R. 918, 919; 172 A.L.R. 1351, esp. at

The courts which sustained the validity
and union shop agreements at common
any distinction with regard to the purp
union used the money collected from empl
a union shop agreement. Indeed, the leg
which the validity of the union shop agre
common law precluded any restriction on t
collected. As the Supreme Court of North
in *Hudson* v. *A.C.L. R.R. Co.*, (1955) 242
S.E. 2d at 453:

> "Beyond question, the right to wo
> to every person. But employment o
> another is not so guaranteed. In the a
> tion by legislation, an employee's rig
> the terms of his employment contrac
> provided that the employee might be
> any reason or none . . ."

Since the employer at common law co
impose any condition of employment which
so the employer and the union at commo
joint agreement fix any condition of emplo
fit. *Williams* v. *Quill*, 1938, 277 N.Y. 1, 9,
550, appeal dismissed, 303 U.S. 621; *Rown*
Guernsey Breeders' Co-op, 1947, 194 Misc. 7
272, 274. Cf. *Parker* v. *T. Smith & Son*, Ct
70 So. 2d 893, 896; *Greenwald* v. *Chiarella*
Div. 213, 63 N.Y.S. 2d 49; *Ensley* v. *Assoc*
1943, 304 Mich. 522, 8 N.W. 2d 161, 163-164.

of closed or union shop conditions hence was valid
spective of the use made of the moneys secured by
tioning employment on union membership. Whethe
moneys were used for legislative or political purpose
immaterial. (See cases idscussed, *infra, Point* III, C

**III. SECTION 2, ELEVENTH DOES NOT VIOLATE THE CO
TUTION BY PERMITTING UNION SHOP AGREEM
UNDER WHICH DUES MAY BE USED FOR LEGISLATIV
POLITICAL PURPOSES OPPOSED BY SOME WHO PA
DUES.**

In 1934, in the Railway Labor Act, Congress impo
restriction on the common law right of an interstate
road to terminate the employment of its employees fo
reason it saw fit. In that Act, Congress left such rail
free to impose such conditions of employment as the
fit or might agree to in collective bargaining with c
tive bargaining representatives except that among
limitations it forbade the termination of employmen
cause an employee belonged or did not belong to a
organization. Railway Labor Act, Section 2, Fo
Fifth; 45 U.S.C. Sec. 152, Fourth, Fifth. In 1951 Con
reconsidered that limitation and repealed it in subst
part. By the amendment of the Railway Labor Act a
subsection Eleventh to Section 2, Congress provided
it no longer prohibited certain types of union shop a
ments; closed shop agreements, or union shop agree
not within that description, continued to be prohibited
far as federal law of itself is concerned, that is al
Congress did. It repealed its prohibition of the union
agreement here involved. The argument that such
of Congress is unconstitutional necessarily comes do
an argument that the individual appellees have a con
tional right to have Congress continue to prohib
union shop agreement here involved. Obviously, n
has a constitutional right to have Congress prohibi
thing.

The fact that Section 2, Eleventh, in repealing in
the federal prohibition of union shop agreements, do
limit the purposes for which unions may spend funds

to it by employees pursuant to a union s
does not render that provision unconstitut

A. Section 2, Eleventh Intentionally Imposes no Purposes for Which a Union May Expend Fe lected Pursuant to a Union Shop Agreemen

The court below made no express constru 2, Eleventh of the Railway Labor Act as au shop agreements even though fees and du political or legislative purposes. Howev struction was implicit in the court's holdin Eleventh of the Railway Labor Act was to constitutional. The construction that Sec of the Railway Labor Act places no limit uses which may be made of dues and fees union shop agreements is in accord wit intent.

First, it should be observed that this w tion of the Railway Labor Act which was the Supreme Court of Nebraska and by th *Hanson* case (351 U.S. 225, 160 Neb. 669 assumed that the Railway Labor Act au shop agreements although fees and dues w for legislative and political purposes. It w that the Supreme Court of Nebraska, like here, decided that Section 2, Eleventh of t bor Act was unconstitutional, and this C the case and reversed upon the assumption correct interpretation of the statute (see B.).

The statute authorizes carriers and labo to make union shop agreements with the membership shall not be conditioned on a payment of dues, fees, and assessments. language reads (U.S. Code, Title 45 Eleventh):

> "Notwithstanding any other provisi or of any other statute or law of the U

or of any State, any carrier . . . and a labor orga
tion . . . shall be permitted—

"(a) to make agreements, requiring as a cond
of continued employment that . . . all employees
become members of the labor organization . . .
vided, that no such agreement shall require such
dition of employment with respect to employe
whom membership is not available upon the
terms and conditions as are generally applicab
any other member or with respect to employe
whom membership was denied or terminated for
reason other than the failure of the employee to te
the periodic dues, initiation fees, and assessm
(not including fines and penalties) uniformly requ
as a condition of acquiring or retaining membersh

There is no condition or limitation based upon the us
which the labor organization puts the fees, dues, and
sessments. Congress, when it was holding hearings on
debating the Union Shop Amendment to the Railway
bor Act, repeatedly had urged upon it the argument
it was unfair to require an employee as a condition
employment to pay dues and fees which are used fo
litical, legislative, or insurance arrangements with w
the employee is in disagreement. Thus, in opposing
adoption of the Union Shop Amendment to the Rail
Labor Act, Mr. Daniel P. Loomis, then Chairman of
Association of Western Railways, testified before the
ate Subcommittee on Labor and Public Welfare as fol
(Hearings on S. 3295, 81st Cong. 2d Sess., on May 23,
pp. 316-317):

"Without any limitation upon the right of th
ganizations to levy dues, fees, or assessments . . .

"Such funds as were thus raised could be use
discriminately by the organizations and in many
solely at the discretion of the officers of the orga
tions. We have seen recent instances where f
from one organization have been tendered to an
organization for the alleged benefit of some ge
purpose or for political purposes."

Similarly see the following colloquy
Thomas, Chairman of the Senate Comm
hearings, and Mr. Jacob Aronson, Vice
New York Central Railroad Company (*ib*
pp. 173-174):

> ". . . there is the further considerat
> posal does not even limit the numbe
> of dues, fees, and assessments that
> by the particular union.
>
> • • • • • •
>
> The Chairman: Would you like t
> Government enact a law that says
> should have neither funeral dues n
> for such dues? . . .
>
> • • • • • •
>
> The Chairman: That is the way t
> but would you like to have us legisl
> tion of fees and rules?
>
> Mr. Aronson: You mean, if you pr
> shop?
>
> The Chairman: Yes.
>
> Mr. Aronson: I say, if you pres
> shop it would seem to me there
> regulations.
>
> The Chairman: For example, wou
> us get into the field where we say t
> must never give pensions, to corpo
> bigger than 1 percent of their earni
> like that? • • •
>
> The Chairman: But there is an a
> eral Government is going to say tha
> not have funeral dues, or they must
> fits, or they must not have any of t
> little dues that they take up for g
> something of that nature."

Congressman Hoffman, in opposing
Amendment to the Railway Labor Act d
on the floor of Congress, used as one of
fact that this amendment would be us
dues, and assessments for poilitical pu
Rec. 17049-17050.

In view of the foregoing, it is plain that Congress
aware of the arguments with respect to use of fees
dues collected through union shop agreements and
erately refrained from imposing any restriction on th
of such funds for purposes to which an employee n
be opposed. To the extent that the use of union fund
building up "war chests" for political candidates, p
the same problem as the donations by business corp
tions to political campaigns, Congress had already
with this problem in the Taft-Hartley Act by amen
the Federal Corrupt Practices Act to apply equall
unions (U. S. Code, Title 18, Section 610).

During the hearings preceding the enactment of
Taft-Hartley Act, Congress took extensive testimony
ting forth the alleged abuses of the closed shop and
union shop to coerce employees to furnish funds
political purposes to which they were hostile. Cecil
DeMille, whose litigation over his alleged constituti
right not to have to choose between his job and payin
assessment to fight the Right-to-Work laws, is set f
below, testified at length in opposition to permitting un
to make employment conditional on union membership
to use dues, fees, and assessments for political purp
(Hearings, Senate Committee on Labor and Public
fare, on S. 55, 80th Cong., 1st Sess., February 14, 1947,
796-819, 2059; Hearings, House Committee on Educa
and Labor, on Amendments to National Labor Relat
Act, 80th Cong., 1st Sess., February 21, 1947, pp. 1
1187.) And the Senators and witnesses made repe
references to the *DeMille* case (Hearings, Senate Com
tee on Labor and Public Welfare, on S. 55, 80th Cong.
Sess., pp. 1004, 1452, 2059; Hearings, House Committe
Education and Labor, on Amendments to the Nati
Labor Relations Act, 80th Cong., 1st Sess., pp. 1624-1
93 Cong. Rec. 4135) and argued for and against the
dom to use a union shop agreement to secure political
tributions (Hearings, Senate, Committee on Labor
Public Welfare, on S. 55, 80th Cong., 1st Sess., pp.

1455-1456, 1687, 2065, 2146, 2150, 2401; Hearings, House Committee on Education and Labor, on H. R. 8, etc., 80th Cong., 1st Sess., pp. 64, 350, 1326, 2260, 3015, 3057, 3650, 3701, 3806; 93 Cong. Rec. 3642, 3669, 4885, 4887, 4888-4889, 5110, 6436, 6437, 6440, 6523, 7488, 7492). During these debates on the floors of Congress the special election editions of Labor were discussed in exactly the context here involved, namely, as a use of funds of employees to support a political candidate which some of those employees might not desire to support (93 Cong. Rec. 6436). Likewise, the role of organizations such as Railway Labor Executives' Association, and the CIO's PAC, which was a precursor of COPE, was similarly debated (93 Cong. Rec. 6436-6438, 6440, 6523).

The Federal Corrupt Practices Act applies only to federal elections. But in a few states there exist similar acts which bar labor organizations from making financial contributions to campaigns. See, for example, Burns Indiana Stat. Ann. Sec. 29.5712; New Hampshire Laws, Ch. 273, 1957 Supp., Chap. 70.2; Purdon's Pennsylvania Stat. Ann. Title 25, Sec. 3543; Vernon's Texas Civil Statutes, Art. 5154a, Sec. 4b, held constitutional in *Federation of Labor* v. *Mann*, 1945, Tex. Civ. App., 188 S.W. 276; Wisconsin Stat. Ann., 1957, Sec. 346.12.56.

There is, of course, here no evidence and no contention that the defendant unions contributed money to federal political campaigns in violation of the Federal Corrupt Practices Act. Such contention was expressly disavowed. R. 232. Georgia has not seen fit to adopt such an act. Plaintiffs are in effect seeking to have the courts enact for all states such a statute by judicial fiat. And they seek to accomplish this result not by direct judicial legislation but by the compulsion of enjoining a union shop agreement unless the union having such agreement acts in compliance with such non-existent political legislation.

Since the present case has been pending an effort has been made in Congress to secure enactment of legislation giving the plaintiffs the relief they have sought in this case.

In rejecting such legislation Congress made it plain that it was opposed as a matter of policy to enabling employees to interfere with the unions in the use of fees, dues, and assessments for any lawful purpose for which the unions may expend its funds. We believe the views expressed in Congress in rejecting the proposed legislation are additionally persuasive that Congress intended no such restriction. *United Mine Workers* v. *Ark Oak Flooring Co.*, 351 U.S. 62, 75.

On June 16, 1958, the Senate rejected by a vote of 51 to 30 (104 Cong. Rec. 11347) a proposed amendment to pending labor legislation, which read as follows (104 Cong. Rec. 11330):

> "Sec. 503 (a) Any member of a labor organization whose employment is conditioned upon such membership may file a petition with the Secretary requesting that moneys paid as membership dues or fees to such labor organization be expended exclusively for collective bargaining purposes or purposes related thereto. • • •
>
> "(b) When the Secretary shall have determined that such moneys have been so expended, he shall bring in behalf of such petitioner a civil action in any court of competent jurisdiction against such labor organization for the recovery of all the moneys paid by the petitioner to such labor organization during the life of such agreement and for such other appropriate and injunctive relief as the court deems just and proper. Any amount so recovered shall be paid to the petitioner on whose behalf such action was brought and in whose favor judgment was rendered."

In introducing this amendment Senator Potter adverted to the case of *Allen* v. *Southern Railway Company*, 249 N.C. 491, 107 S.E. 2d 125, then recently decided in the trial court in North Carolina, by name, and gave a long and full description of the proceedings in that case (104 Cong. Rec. 11274-5). Senator Potter, among other things, stated:

". . . it seems to me most unfair that when an em
ployee is compelled to join a union in order to con
tinue his employment or to obtain employment, h
must pay not only his share of the cost of the union'
bargaining processes, but also is compelled to suppor
many other principles, policies, programs and activi
ties to which he may not subscribe, or to which h
may be strenuously opposed. . . .

. . . . . .

"I think that point was recently brought out in
jury verdict in a North Carolina State court case. . . .'

The statements made by the opponents of the bill sho
they regarded existing legislation as having sufficientl
taken care of any problem of use of union funds for po
litical purposes, and that as to the other uses of unio
funds they believed the will of the majority of the unio
members should prevail. For instance, Senator Rever
comb stated (104 Cong. Rec. 11343):

"The pending amendment, as I understand, is di
rected at preventing the use of the funds of a labo
union for political purposes or for the advancemen
of any political party. That is a very laudabl
purpose.

. . . . . .

"But in considering the amendment, I raise thi
question: What would be the effect of the very limite
language of the amendment, namely, that the fund
shall not be used except 'for collective bargaining pur
poses or purposes related thereto'? Would such lan
guage prevent a labor organization from maintainin
a hospital or from using some of its funds for the re
lief of the sick members?

. . . . . .

"Therefore, Mr. President, I have the feeling tha
the amendment is too limited; that if the amendmen
were adopted, it would create a bad situation and
would work ill effects; t it would not permit a unio
as an organization to ca for its sick members or t
maintain hospitals—as we know some unions do."

And Senator Morse stated (104 Cong. Rec. 11338-9):

"This amendment would seek to give encouragement to members of unions who are opposed to majority rule—for instance, if the majority of the union happen to differ from one member on the question of the expenditure of certain funds which the union has authority to spend.

* * * * * * * * * *

"Are we going to vote that the Secretary of Labor shall have the legislative function of determining what, in his judgment, is for collective bargaining or purposes related thereto? * * *

"What purposes are related to collective bargaining, Mr. President? For instance, consider the public-relations work of a union, to say nothing of the fraternal work that is done by a union among its members. After all, the union shop contract is a legal contract between employers and representatives of the union, in carrying out their constitutional right of freedom of contract in this country. Thus they have entered into a perfectly legal contract.

* * * * * * * * * *

"Let us consider the public-relations work of a union in a community. Are we to say that a union which participates in civic activities, a union which can always be counted upon in the county or in the community to be of help in every charity drive and every civic program in the community, is not helping its collective-bargaining position and is not doing something directly in relation to purposes connected with collective bargaining?

"Mr. President, I once was the president of the Rotary Club in my hometown. I wish to say that we conducted what we thought were some great civic-betterment programs; and I know the effect on that business community of a union with a social conscience. I know the attitude of that group of business leaders in my home community regarding a union which could be counted upon to support great civic enterprises.

* * * * * * * * * *

"Mr. President, let me make perfectly clear that under the Taft-Hartley Act, no union can contribute

to a Federal candidate's campaign fund. That w
be unlawful. But in this country have we reached
point where a group of men and women who
joined together in a fraternal organization know
a trade union, and who know that a single sessio
a city council or a State Legislature or of the
gress of the United States can wipe away a great m
of the rights which over the years they have ea
the hard way in the field of labor relations, ca
take any interest in political affairs? Have we re
reached the point, for example, where a union ca
conduct a program * * * in support of a widened
erage, for example, of a fair labor sta. lards act w
many unions favor?

* * * * * * * *

"How absurd can we be if in one breath we say
are for democracy in unions, and then vote for s
thing that takes away from union members democ
control?"

Yet if the position of the plaintiffs, and the holdin
the Court below, are sound, then all that discussion
wasted; if such position is sound, the efforts to obtain
strictions were superfluous and the rejection of such
posals futile, for under that view the complained-of ac
ties would render a union shop agreement, and any le
lation permitting such agreement, unconstitutional. N
in the course of any such legislative activities was
such argument even suggested. And if plaintiffs' a
ment is sound that union expenditures for legislative
political activities render union shop agreements un
stitutional, then all the effort and controversy and elec
battles over state right-to-work laws have been and
wasted and futile; since unions do engage in those ac
ties, laws to make union shop agreements illegal are su
fluous because they would be unconstitutional anyway

B. This Court has expressly held Section 2, Eleventh Not Unconstitutional in Permitting Union Shop Agreements Under Which Dues Are Used for Legislative and Political Purposes to Which Some of the employees Are Opposed.

The Supreme Court of Nebraska in *Hanson* v. *Union Pac. R.R. Co.*, 1955, 160 Neb. 669, 71 N.W. 2d 526, held that Section 2, Eleventh of the Railway Labor Act was unconstitutional under the First and Fifth Amendments to the Constitution of the United States because it left unions free to use fees and dues collected under union shop agreements for political and legislative purposes to which employees subject to the agreements were opposed. This Court reversed that decision. *Ry. Employes' Dept.* v. *Hanson*, 351 U. S. 225. Since none of the findings of the trial court and none of the evidence differed in any material respect from the findings and evidence in the Nebraska case, we respectfully urge that the decision of this Court in the *Hanson* case is dispositive here and requires a reversal of the decision below.

An examination of the decision of the Supreme Court of Nebraska in the *Hanson* case shows that its basis of decision was in all respects the same as that of the court below. The Supreme Court of Nebraska stated (160 Neb. at 697, 71 N.W. 2d at 546):

> "We think Congress was without authority to impose upon employees of railroads in Nebraska, contrary to our Constitution and statutory provisions, the requirement that they must become members of a union representing their craft or class as a condition for their continued employment. It improperly burdens their right to work and infringes upon their freedoms. This is particularly true as to the latter because it is apparent that *some of these labor organizations advocate political ideas, support political candidates and advance national economic concepts which may or may not be of an employee's choice.*" (Italics supplied)

Again the Supreme Court of Nebraska stated
at 698-700, 71 N.W. 2d at 547):

"For the sake of discussion let us assume
right to require employees in interstate com
become members of a union falls under th
power of Congress to regulate interstate
rather than under the freedoms guarantee
First and Fifth Amendments. It is apparen
purpose of the amendment was to get rid
riders. A free-rider is an employee who re
of the benefits of collective bargaining but
does not bear any of the costs thereof becaus
not belong to the union which negotiated an
such benefits. Assuming it would be reas
require free-riders to pay their proportion
of the cost of collective bargaining carried o
behalf by labor organizations, we do not
means selected has any real and substantia
to the object sought to be obtained . . . b
requiring him to pay initiation fees, dues a
ments he is required to pay for many thing
the cost of collective bargaining . . .

* * *

". . . assuming it would be reasonable for it
all employees receiving benefits from colle
gaining agreements to contribute their pro
share of the cost thereof, a question not befo
one which we do not decide, we are, nevert
the opinion that it cannot be done in a m
which it was here attempted. *To requir*
ployees receiving benefits from collective b
agreements to pay the labor organizations
them initiation fees, dues, and assessments
quire them to make contributions to any and
varied objects and undertakings in which s
organizations are or may become engaged
have no substantial relation to the object he
to be obtained." (Italics supplied)

Thus the Supreme Court of Nebraska made
findings and holding as below, and for the same
And it did so upon the same type of evidence.

The record in the *Hanson* case showed that union dues were used to pay for subscriptions to Labor (record in Supreme Court, No. 451, October Term, 1955, p. 143, Exh. 10), that Labor issued special election editions urging support of given candidates for public office (*idem.*), and that union dues were otherwise used for political purposes (*ibid.*, pp. 254-256, Ex. 31). There, the record showed that the unions maintained legislative representatives on both the state and national levels whose salaries and expenses incurred in lobbying were paid out of union dues (id., pp. 125, 126, 135, 136, 144, Exs. 7, 9, 10).

The briefs filed by Robert L. Hanson, *et al.* in this Court in *Ry. Employes' Dept.* v. *Hanson*, 351 U. S. 225, made all the contentions which the plaintiffs here urged upon the court below. In the main brief of Robert L. Hanson, the Statement of the Case contained the following headings, among others:

> "(c) The requirement of paying dues to support political activities of the unions." (p. 16)
>
> "(aa) For political and economic propaganda." (p. 16)
>
> "(bb) For the salaries and expenses of lobbyists." (p. 17)
>
> "(cc) To elect candidates for public office." (p. 17)

The same brief under the argument contained the following points among others:

> "II. Plaintiffs are deprived of their liberty and property." (p. 58)
>
> "B. Plaintiffs are deprived of their property in the form of money." (p. 67)
>
> "2. The Railway Labor Act provides no restrictions as to the purposes for which the money thus collected may be spent." (p. 67)
>
> "(a) Political activities of the unions are paid for by money from dues, fees and assessments." (p. 68)

The brief describes the manner in wh
publication "Labor" issues special editio
port for specific political candidates (p. 6
how each railway union has its own specia
addition to Labor (p. 17). It describ
through radio programs and other contri
penditures which unions or their affiliates
didates for political office (pp. 16-17, 68-7

From the foregoing it is evident that th
Hanson case had before it for decision th
decided by the court below. This Court re
had this issue before it, for it described th
State Supreme Court as follows (351 U. S

> "The Supreme Court of Nebraska .
> union shop agreement violates the Fi
> in that it deprives the employees of t
> association and violates the Fifth Am
> it requires the members to pay for
> sides the cost of collective bargaining.

And with that record before it, and wi
the holding below, this Court in the *Hanso*
upheld the enforcement of a union shop ag
cal with the one here involved, although it
the purposes for which a union could spen
fees, dues, and assessments collected unde
agreement. The Court said (351 U. S. at

> "The only conditions to union mem
> ized by Section 2, Eleventh of the Rail
> are the payment of 'periodic dues, init
> assessments.' The assessments that
> imposed do not include 'fines and pen
> nancial support required relates, th
> work of the union in the realm of col
> ing. No more precise allocation of
> to individual members seems to us to

The holding of this Court that no al
actual use of initiation fees and dues nee

that they would be regarded as used for a purpo
"relates" "to the work of the union in the realm
lective bargaining" is made doubly clear by its st
that the holding does not necessarily apply to '
ments" levied to support a particular activity. Th
Court states (351 U. S. at 235):

> "If 'assessments' are in fact imposed for p
> not germane to collective bargaining, a differen
> lem would be presented."

In the instant case no issue with respect to asse
is presented. There was no evidence that any of
fendant unions has collected any assessments for a
poses which the plaintiffs found objectionable. cf.
& Lomb, 1954, 108 N.L.R.B. 1555, where the N
Labor Relations Board held that a union in setting
optical business had departed from the realm of co
bargaining. Thus an assessment specifically to rais
for such a purpose might raise an issue not pas e
the *Hanson* case, but we have no such issue here.

Although the trial court made a finding in the
case that the fees and dues collected by the de
unions under their union shop agreements with the
ant carriers have "been and are being used in sub
amounts to impose upon plaintiffs and the class th
resent, as well as upon the general public, confor
those doctrines, concepts, ideologies and program
posed by plaintiffs and the class they represent (
par. 6), there is no basis, none whatever, in the reco
for such a finding.* There was nothing in the stip
or exhibits here which afforded the slightest basis
finding. Rather the evidence here was in all r
respects the same as that which this Court regarde
"forcing ideological conformity" (351 U. S. at 23
deed the reference in the finding below to the im
upon the general public of conformity to those do

* See further discussion on this below, Point VIII.

concepts, ideologies, and programs, demon
finding rested on nothing but the view of
that the exercise of freedom of speech and
the viewpoint of the union was a form of "
formity. Obviously using funds to pay for
or publications does not impose conformity
of the employees, equally with each memb
generally, free to make up his own mind,
listen or read or not to listen or read. In *A*
Ry. Co., 249 N. C. 491, 107 S.E. 2d 125 (19
advisement on reconsideration), the Sup
North Carolina said:

> "All that defendant unions demand
> that they pay the ordinary periodic du
> fees uniformly required of all membe
> respects, plaintiffs are free to speak a
> ing to their own desires even if by so d
> and act at cross-purposes with defend

Indeed, if any condition other than t
"ordinary periodic dues and initation f
imposed upon any employee, then under t
union shop agreement itself the agreement
plied to such employee. Nothing in this
within the reservation of judgment by th
issues presented if dues, fees, or assessmer
as a cover for forcing" ideological conform

Finally, this Court carefully included
"financial support of the collective bargai
all who receive the benefits of its work" (3
(Italics added.) Support of the union, w
gaining agency, rather than financing solel
is what the Court sustained. The benefits
envisioned the employees as enjoying
"work" of the union, not merely its collec

In the *Allen* case, the Supreme Court of
said:

"'This sentence appears in the second quotati
more precise allocation of union overhead to i
ual members seems to us to be necessary.' W
not dispel the impression that the meaning
sentence is that the requirement that unwilling
bers pay ordinary periodic dues and fees for th
port of their collective bargaining agency is a
able requirement and that no more precise all
need be made."

But more compelling than any language used b
Court is the fact that it unanimously reversed a st
preme court for doing just what the Georgia Cou
namely, enjoining enforcement of a union shop agr
because part of the fees and dues is used for po
legislative, charitable, and welfare purposes of whic
employees may not approve.

The Supreme Court of Nebraska itself has so con
the holding in the *Hanson* case. On remand of tha
from this Court the plaintiffs there filed a motion for
fication of the injunction, rather than its dissolut
as to prohibit only the enforcement of the union
agreement insofar as it required the payment of mo
be spent for purposes unrelated to collective barg
They contended that such was the meaning of the
opinion. The Supreme Court of Nebraska asked
filing of briefs and heard full argument, and th
parently considered the motion unworthy of disc
for it denied it in a *per curiam* order without opini
Similarly, in *Moore* v. *C. & O. R. Co.*, 198 Va.
S.E. 2d 140 (1956), the Court initially affirmed t
missal of the action by the trial court. Subsequen
Court denied a petition for rehearing which was ba
the same arguments as made to this Court on petit
rehearing in the *Hanson* case, including the use of
funds derived from dues for political purposes.

Likewise, in *Sandsberry* v. *Intl. Assn. of Machini*

* Not reported. Supreme Court of Nebraska, General No

S.W. 2d 412, cert. den. 353 U. S. 918 (Te
it was argued, that this Court's decisi
case did not govern a situation where
the unions spent a portion of their fund
legislative purposes. The Supreme Co
cluded that such facts were before th
jected the contention, holding the *Hans*

The Supreme Court of North Carolina
conclusion in a case involving the same
ments involved here, the same unions,
and in part the very people whom plain
to represent. *Allen* v. *Southern Ry. Co.*
S.E. 2d 125 (1959) (now under advisem
reconsideration). That Court, examini
this Court in the *Hanson* case, in the l
and contentions made, and in the light
the Supreme Court of Nebraska in the
served that "the appellees in Hanson,
pear to have drawn into sharp focus
pressed by plaintiffs," and concluded:

> ". . . the very questions how raised
> before the Court and decided in Ha
> words upon which plaintiffs rely,
> text, do not support their contentio

Thus the highest courts of five state
arguments that the decision of this Co
case did not apply to the validity of unio
where it is shown that the unions eng
legislative activities. Only the court be
argument. The Supreme Courts of N
Texas, and North Carolina rejected an
tion of the *Hanson* opinion.

(Tex. Sup. Ct., 1956)
ision in the *Hanson*
re it was shown that
nds for political and
Court of Texas con-
this Court, and re-
nson case applicable
lina reached the same
me union-shop agree-
s, the same railroad
laintiffs here purport
Co., 249 N.C. 491, 107
sement on motion for
ining the opinion of
ne light of the record
ght of the holding of
the *Hanson* case, ob-
on, in their brief, ap-
cus the matters now
d:

sed by plaintiffs were
Hanson; and that the
ly, when read in con-
ition."

tates have considered
Court in the *Hanson*
union-shop agreements
engage in political or
below sustained such
f Nebraska; Virginia
any such interpreta-

C. Apart from the Hanson Case, an Employee Has No Co tional Right to Work for a Specific Employer Without H His Dues Used for Political or Legislative Purposes with He Disagrees.

The Court below found that enforcement of the u shop agreement deprives the plaintiffs of their proj and liberty under the First, Fifth, Ninth, and T Amendments to the Constitution of the United St Since obviously the plaintiffs have no constitutional r to employment with any of the defendant railroads, de vation of that employment pursuant to an agreement not infringe any of their constitutional rights.

In the famous case of *DeMille* v. *American Federa of Radio Artists*, 77 A.C.A. 430, 175 P. 2d 851, affirmed Cal. 2d 139, 187 P. 2d 769, certiorari denied, 333 U. S. all the judges who considered the case in the trial co the intermediate appellate court, and the Supreme C of California sitting *en banc*, unanimously held that Mille had no legal remedy to protect him from being quired under a union shop contract to pay a union ass ment to oppose a State Right-to-Work law or lose $98,200-a-year contract with the Columbia network. Supreme Court of California wrote an elaborate opi in which it considered all the numerous legal theories vanced by illustrious counsel for DeMille. The Court that opposing a Right-to-Work law was not outside scope of the union's authority as set forth in its cons tion and by-laws. The Court further held that using fu raised by assessments on members for that purpose likewise within the union's proper functions.

With respect to the contention that the union, by cau DeMille's loss of employment because of his refusa contribute his money to oppose legislation in which believed, had violated his constitutional rights, the C said (31 Cal. 2d at 147, 148, 150; 187 P. 2d at 775, 777):

> "The plaintiff next contends that the levy of the sessment and the consequent suspension upon

refusal to meet it, infringed his constitutional right of suffrage, freedom of speech, press and assembly . . .

"The ground of the plaintiff's assertion is that his payment of the assessment would be an expression on his part contrary to his personal beliefs . . .

* * * *

". . . payment by the plaintiff of the assessment would not stamp his act as a personal endorsement of the declared view of the majority. Majority rule necessarily prevails in all constitutional government . . . else payment of a tax levied for a duly authorized and proper objective could be avoided by the mere assertion of beliefs and sentiments opposed to the accomplishment thereof. In a government based on democratic principles the benefits as perceived by the majority prevails . . . Other organizations, such as Medical Associations, Bar Associations, and the like, have used their funds to support favorable legislation or defeat measures considered in the opinion of the majority or its duly authorized representatives to be inimical to the public interest or to its own welfare. It has never been considered that a difference of opinion with the association as to the use of association funds for such purposes, where otherwise lawful, was a matter for judicial interference."

The reference to the use by bar associations of funds for legislative purposes offers a strong analogy. As this Court pointed out in the *Hanson* case (351 U. S. at 238):

"On the present record, there is no more an infringement or impairment of First Amendment rights than there would be in the case of a lawyer who by state law is required to be a member of an integrated bar."

Not only have the courts refused to permit members to enjoin bar associations from participating in campaigns to elect to political office approved slates of candidates for judgeships and positions of states attorney (*La Belle v. Hennepin County Bar Ass'n*, 1939, 206 Minn. 290, 297-298, 288 N.W. 788, 792; *Smith v. Higinbotham*, 1946, 18

Md. 115, 129, 48 A. 2d 754, 761) but they have sustained as against claims of constitutional violation, statutes making the practice of law conditional upon belonging and paying dues to an integrated bar. Of especial interest is the history of the integrated bar in Wisconsin. There the Supreme Court of Wisconsin at first denied the petition for integration of the bar because of the use of dues to maintain a legislative agent. *In re Integration of the Bar*, 1946, 249 Wis. 523, 529-530, 25 N.W. 2d 500, 502-503.

The court thereafter reversed itself and granted the petition to integrate the bar for a two year trial period when it was shown that too substantial a minority of the lawyers in the State had failed to join bar associations. See *In re Integration of the Bar*, 1956, 273 Wis. 281, 77 N.W. 2d 602, 603.

On December 22, 1958, the Supreme Court of Wisconsin issued another opinion (*In re Integration of the Bar*, 5 Wis. 2d 618), which made the integrated bar permanent in Wisconsin. The court found it satisfactory. In this respect the court rejected the argument that integration interfered with the independence of lawyers, stating (at p. 623):

> "The integrated Bar does not destroy either the independence of the Bar or of the individual lawyers. The State Bar of Wisconsin was not intended to control and there is no evidence or intimation that it has controlled or attempted to control the thinking of any of its members. When the State Bar Association of Wisconsin through its Board of Governors, an elected representative policy-making body, duly decides a policy within its province on behalf of the State Bar every one understands or should understand the policy is that of the State Bar as an entity separate and distinct from each individual. Such pronouncement of the State Bar does not necessarily mean all of its members agree with that pronouncement, nor is it necessary for them to do so. Individual members are free to think and to express their own opinions. But it is the nature of a representative democratic organization that the elected representatives of the group

speak and act for it in accordance with its organi laws."

The court expressly overruled all of the statements i any of its earlier opinions which had placed any restric tions on the purposes for which the integrated bar coul expend funds. 5 Wis. 2d at 626.

The arguments which have been rejected by the court in upholding integration of the bar and suspending or dis barring attorneys who failed to pay dues are in all respect similar to the arguments made by appellees here. See *I re Florida Bar*, Fla., 1952, 62 So. 2d, 20, 23. Similarly see *In re Mundy*, 1942, 202 La. 41, 11 So. 2d 398, where lawyer refused to pay dues to an integrated bar on th ground that he had the constitutional right to belong not belong to a bar association. Compare William Wicke The Pros and Cons of an Integrated Bar, 23 Tenn. La Rev. 457, 459 (December 1954) where William Wicke Dean of the Law School of the University of Tennesse states:

> "The must-be-a-member and the must-pay-dues pro visions in the enabling acts of integrated bars hav been passed on many times by the courts and ever court that has considered them has held them valid."

"People ex rel. Karlan v. Culkin, 248 N.Y. 465, 47 162 N.E. 487 (1928); In re Disbarment of John D. Gre house, 189 Minn. 51, 248 N.W. 735 (1933); Carpenter v. Sta Bar of California, 211 Calif. 358, 295 Pac. 23 (1931 Kelley v. State Bar of Oklahoma, 148 Okla. 282, 298 Pa 623 (1931); In re Gibson, 35 N. Mex. 550, 561, 4 P. 2 643 (1931); In re Integration of Nebraska, State Bar Ass'n 133 Neb. 283, 275 N.W. 265 (1937); In re Integration o State Bar of Oklahoma, 185 Okla. 505, 95 P. 2d 113 (1939 Petition of Florida State Bar Ass'n, 40 So. 2d 902 (1949

See also cases collected 114 ALR 161, 151 ALR 617.

Although the integrated bar cases rely on the allege distinction between special privilege callings and commo callings, this issue is irrelevant once it has been accepte

that even persons in a common calling can be required to belong to a union and pay dues and fees to it as a condition of continued employment. No one disputes that this Court in *Hanson* (351 U. S. 225) settled at least that issue. Lawyers have the same constitutional rights of freedom of association, freedom of speech, freedom of thought, and freedom from arbitrary restrictions upon their right to earn a living by practicing their profession as do all other persons. Compare *Ex parte Garland*, 1867, 4 Wall. 333, 379-380; *Schware* v. *Board of Bar Examiners*, 1957, 353 U. S. 232, 238-239; *Konigsberg* v. *State Bar*, 1957, 353 U. S. 252. If it is constitutional to require lawyers as a condition of practicing their profession to pay money to be used to advocate policies, ideas, legislation, or candidates for judgeships irrespective of the lawyer's opposition to having his money used for purposes with which he disagrees, then it is equally constitutional to permit carriers and unions to enter into union shop agreements under which dues and fees may be used for purposes with which the employee disagrees. If the reasoning of the Court below is sound, then the recent sharp debate in Georgia legal and legislative circles about an "incorporated" bar was but an academic discussion; had the legislature enacted it the Supreme Court of Georgia would have stricken it as unconstitutional, under such reasoning.

More than half of the states have integrated bars.* In

* Alabama (1923, Statute); Alaska (1955, Statute); Arizona (1933, Statute); Arkansas (1938, Constitutional amendment and Court rule); California (1927, Statute); Florida (1949, Court rule); Idaho (1923, Statute); Kentucky (1934, Statute and Court rule); Louisiana (1940, Statute and Court rule); Michigan (1935, Statute and court rule); Mississippi (1930, Statute); Missouri 1944, Court rule); Nebraska (1937, Court decision); Nevada 1929, Statute); New Mexico (1925, Statute); North Carolina 1933, Statute); North Dakota (1921, Statute); Oklahoma (1939, Court decision); Oregon (1935, Statute); Puerto Rico (1932, Statute); South Dakota (1931, Statute); Texas (1939, Statute and Court rule); Utah (1931, Statute); Virgin Islands (1956, Court

view of the reliance upon the integrated bar analo
this Court in the *Hanson* case (331 U. S. at 238) a
the Supreme Court of California in the *DeMille* ca
Cal. 2d at 150, 187 P. 2d at 777), we submit that the
spread commendation of judges and lawyers of their
tices of taking funds from every lawyer in the sta
using these funds for purposes including propa
legislation, and political activity, shows there is no
constitutional basis for the ruling below. That judg
lawyers throughout the country practice among them
the exclusion from the practice of law of anyone unw
to pay money to be used for propaganda, legislati
political activity with which he disagrees, shows how
pletely harmonious with our legal institutions a
practices condemned by the court below. Indeed, the
ity of a union shop agreement would appear to be
fortiori proposition if an integrated bar is valid, f
latter unquestionably comes into being by governm
action,—a legislative act or judicial decree or both,—
a union shop comes into being by private agreement

It may be argued that the political activity of th
grated bar is largely confined to endorsement of j
candidates. But once it be held that a man's right t
a living by following his chosen profession can co
tionally be conditioned upon his being a member
association and upon his paying fees and dues to b
for purposes to which he is opposed, the nature of th
or activities to which he is opposed does not seem re
to the constitutionality of requiring him to join an
fees and dues. If the association exceeds its proper
tion his remedy is not to attack compulsory memb
or dues payment but to remedy or prevent such oth
proper activities. There is at least as much interf
with a man's freedom of association, freedom of th

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rules); Virginia (1938, Statute and Court rule); Was
(1933, Statute); West Virginia (1945, Statute and Court
Wisconsin (1957, Court rule); Wyoming (1939, Statute and
rule).

and freedom of speech in requiring him to pay dues to a union which strikes to secure a collective agreement for a 35 hour week or compulsory retirement at age 70 or strict seniority, as in the union activities considered below. Cf. *Lamon* v. *Georgia Southern Railway Co.*, 1955, 212 Ga. 63, 90 S.E. 2d 658; *McMullans* v. *Kansas, Okla., & G. Ry. Co.*, (E. D. Okla., 1955), 129 F. Supp. 157, 159, aff'd (10 Cir. 1956) 229 F. 2d 50, cert. den. 351 U. S. 918; *Goodwin* v. *Clinchfield R. Co.*, 1954, 125 F. Supp. 441, aff'd (6 Cir. 1956), 229 F. 2d 578, cert den. 351 U. S. 953. Compelling financial support of a union involves just as much if not more infringement on freedom in the sphere of supporting different policies in negotiating agreements and processing grievances as occurs in the legislative or political sphere; in the negotiating field the impact of the union's activities on the individual is direct and binding. Groups of employees within the same bargaining unit have opposing interests in seniority, hours of work, piece work as against straight hourly rates of pay, etc. The compulsions which the court below accepts as constitutional when applied to the realm of negotiating contracts and processing grievances are not constitutionally less objectionable than the activities the court below finds unconstitutional. It is thus apparent the court below has refused to accept the principle of the union shop, not that it has dealt with anything not inherent in the union shop.

While the *DeMille, Hanson, Allen, Sandsberry,* and *Moore* cases are the only cases dealing with the constitutional right of an employee not to have his right to a given job conditioned on payment of fees and dues to be used for legislative or political purposes to which he is opposed, in a line of cases arising under the Union Shop Amendment to the Railway Labor Act the courts have denied employees relief, holding as against all variety of constitutional challenges, that the making and performance of a union shop agreement identical with the agreements involved here did not constitute governmental action. In several cases the plaintiffs were members of a religious

sect which forbade union membership. Th
voked the First Amendment. The courts d
the ground that union shop agreements are
constitutional limitations because their exe
vate parties does not constitute the exerc
mental power. In *Otten* v. *B. & O. R. Co.*
(C. A. 2, 1953), Judge Learned Hand, in so
(at p. 61):

> ". . . Otten complains that the other e
> it in their interest to combine and are
> work with anyone who will not combine
> is true that in so doing they exercise
> kind of economic sanction upon the
> employ him unless he will join, but b
> bination and the railways' refusal are
> it be because they conflict with his scru
> flict results in making it necessary eithe
> to yield what it deems to be one of its
> terests—a 'union shop' with the con
> gives them in dealing with a railway
> plaintiff to yield on a point of conscien
> flicts are inevitable; and, when to econ
> no political sanction is added, they do
> raise any constitutional question.
>
> "The First Amendment protects one
> by the government, though even then,
> cumstances; but it gives no one the righ
> in the pursuit of their own interests ot
> form their conduct to his own religio
> A man might find it incompatible with
> to live in a city in which open saloons
> yet he would have no constitutional righ
> the saloons must be closed. He would
> the city or put up with the *iniquitous* o
> what economic loss his change of dom
> We must accommodate our idiosyncra
> as well as secular, to the compromises
> life; and we can hope for no reward fo
> this may require beyond our satisfactio
> or our expectations of a better world
> omitted; emphasis the Court's.)

To the same effect, see later decisions in this c
F. Supp. 836; aff'd, 2 Cir., 1956, 229 F. 2d 919, c
denied, 351 U. S. 983.

And, in *Wicks* v. *Sou. Pac. Co.*, and in *Jensen* v
Pac. R. R. (S. D. Calif, 1954), 121 F Supp. 454;
Ci., 1956, 231 F. 2d 130; certiorari denied, 351 U.
the Court similarly rejected the contention that
shop agreement executed pursuant to the Unio
Amendment to the Railway Labor Act, deprived p
of rights under the First Amendment, stating (at

"... As a separate reason for denying relief
hold that the plaintiffs are not entitled to pr
of the First Amendment to the United States
tution because that amendment protects only
congressional action and it is not shown here t
action complained of is congressional. [*Reyn
United States*, 98 U.S. 145 (1878)]."

The Supreme Court of North Carolina, in *Hu*
A.C.L. R.R., 1955, 242 N.C. 650, 89 S.E. 2d 441, ci
Otten and *Wicks* cases with approval, stating (242
666, 89 S.E. 2d at 452):

"... the Act of Congress does not compel or
a union shop. As pointed out by Judge L
Hand, it is 'permissive,' not 'self-operative.'
ground that the first ten amendments to the C
tion of the United States protect against congre
action and are not limitations upon the acts of
parties, *Corrigan* v. *Buckley*, 271 U. S. 323, 46
521, 70 L. Ed. 969, it has been held, as again
lenge on constitutional grounds not alleged
that a railroad employee's constitutional rig
not infringed by the Union Shop Amendment.
v. *Baltimore & O. R. Co., supra; Wicks* v. *S*
Pac. Co., D.C.S.D. Cal., 121 F. Supp. 454; ...

For similar cases in accord under the Railway
Act, see *Sandsberry* v. *I.A.M.*, 1954, 277 S.W. 2d
firmed, Texas Sup. Ct., 1956, 295 S.W. 2d 412, ce
denied, 353 U. S. 918, and *Moore* v. *C. & O. R. Co*

mond, Va., Hustings Ct., 1954, 34 L.R.R.M.
curiam, 1956, 198 Va. 273, 93 S.E. 2d 140.
accord under the Labor Management Rel
U.S.C. 151, *et seq.*) see *Hess* v. *Petrillo*, 259
Cir., 1958). For earlier cases sustaining
closed shop agreements as against consti
tions, see *International Association of Mac
son*, 1943, 153 Fla. 672, 15 So. 2d 485; *W
1938, 277 N.Y. 1, 12 N.E. 2d 547, appeal
U. S. 621.

There is no case to the contrary excep
below in this case. Every other case that
contrary has been reversed on appeal.

**IV. THE LEGISLATIVE AND POLITICAL ACTI
APPELLANT UNIONS ARE GERMANE T
BARGAINING.**

As one of the bases of its order the trial c
"the exaction of moneys from plaintiffs an
represent for the purposes and activities de
not reasonably necessary to collective ba
maintaining the existence and position of sai
ants as effective bargaining agents or to
ployees whom said defendants represent of
mutual interest" (R. 103).

This Court in the *Hanson* case (351 U.S. a
that it was not passing on the issues whic
sented if a union under a union shop in
ments" for purposes not "germane to col
ing." The opinion shows that the Court
"assessments" in its usual sense, as dist
fees and dues, which are generally used
support of the union. In the instant case th
are confined to fees and dues. There is n
no finding that any assessment for any p
posed by any defendant on anyone. But eve
in the *Hanson* case is read as meaning tha
must be used for purposes germane to collec

clearly the legislative and political uses here inv
germane to collective bargaining. Since in the *Ha*
the fees and dues were used for the same poli
legislative purposes as here (see Point III, B,
either the use of funds from dues and fees is n
stricted or it must be deemed that these uses are
to collective bargaining.

It is plain that the legislative and political a
shown by the instant record are germane to collec
gaining once the role of legislative and political ac
the area of securing benefits for railway worker
amined. In the railroad industry the efforts of the
labor organizations to obtain better economic rewa
their members and protection from the hazards of
industrial life have on some subjects been directed a
if not more to legislative and political methods of ac
their goals as to conventional "collective bargainin
Railroad employees have obtained through leg
and political activity retirement and unemployment
which employees in other industries have secured in
least by agreements between employers and unio
many instances the railway labor organizations ha
gained with the carriers in order to obtain an agree
support desired legislation. Surely it cannot serio
argued that a labor union acts within the normal a
such an organization when it obtains certain bene
those it represents through an agreement providi
benefits, but acts outside such ambit when, because
tain peculiar necessities of the railroad industry
other reasons, it obtains the same benefits through
tion.

The statutory scheme of the Railway Labor Act
role in collective bargaining which it assigns to po
appointed persons again makes it only reasonab
labor organizations in the railroad industry concer
selves with politics. The National Mediation Board

decisions critical to railway labor (45 U
153, First (e), (f), (g), and (l); 155; 156
(a), (b), Third). The Emergency Board
President of the United States (45 U
decisions critical to railway labor (45 U
arbitrators appointed by the National
in many instances in which management
agree, make decisions critical to railway
157). Neutral referees sitting as membe
Railroad Adjustment Board, appointed
Mediation Board, make decisions critical
153, First (l)). To suggest that unions c
not have the same interest in who appoin
to such positions as they have in negot
and settling disputes thereunder is comp
Thus legislative, political, and collecti
tivities in the railroad industry have be
intertwined.

Numerous hearings and debates in Co
Congress regarded the efforts of the un
agreement of the railroads to legislati
normal and desirable aspect of collective
Railway Labor Act of 1926, the Railroa
of 1937, and numerous amendments to th
ment Act and to the Railroad Unemploym
have been the result of collective barga
railroad unions and the railroads. In ma
ferences of union representatives and c
tives drafted the legislation and agree
before presenting it to Congress. Both l
and carriers joined in lobbying for the le
ing it in hearings and urging it through
steps. The origin of the Railway Labo
recited by counsel for the organized rail
Hearings before the Committee on Inter

U.S.C. 152, Ninth;
56; and 157, Second
ds appointed by the
U.S.C. 160) make
U.S.C. 160). The
al Mediation Board
nt and labor cannot
ay labor (45 U.S.C.
bers of the National
ed by the National
al to labor (45 U.S.C.
s on the railroads do
oints or is appointed
gotiating agreements
mpletely unrealistic.
ctive bargaining ac-
become inextricably

Congress show that
unions to obtain the
lative measures as a
tive bargaining. The
road Retirement Act
the Railroad Retire-
yment Insurance Act
rgaining between the
many instances con-
d carrier representa-
reed upon its terms
h labor organizations
e legislation, support-
gh all the legislative
bor Act of 1926 was
railway employees in
terstate and Foreign

Commerce, House, 69th Cong., 1st Sess. on H. R
9, 11:

"This bill which has been introduced in the
in the Senate simultaneously represents th
of months of negotiations and conferences be
representatives of 20 railroad labor organiza
the Association of Railway Executives repres
representing the great majority, practically
carriers by railroad.

• • •

"Almost everything in this act could have bee
into an agreement signed by the executives of
roads and the executives of the organization
ployees and put in force and effect. Excep
creation of certain Government tribunals."

The description of the origin of the Railroad Re
Act of 1937, in hearings before House Committee
state and Foreign Commerce, 75th Cong., 1st S
H. R. 6956, (1937) as set forth by Mr. George M. H
President, Brotherhood of Railway Clerks, is as
(pp. 10-12):

"In view of that litigation and the uncertaint
future of the legislation the President of th
States wrote a letter to the representatives of
ways and also to myself in the month of Decem
and suggested, in view of the many efforts
been made to pass railroad retirement legisla
the resulting legal controversies, that he would
that the railways and the representatives of t
ers undertake to consider the subject of re
legislation in conference and see if they could
agreement on retirement legislation. . . . Th
ferences continued with some degree of re
although intermittently, until the 18th day of F
at which time the representatives of the tw
reached an agreement, and that agreement re
the preparation of the bill which is now un
sideration by your honorable committee.

• • • •

"Now I should say that this committee had reported from time to time to their constituent organizations, making up the association, and at the meeting which was held in Cincinnati, Ohio, on March 5, 1937, at which time a copy of the bill and the agreement underlying the bill was submitted to the heads of all of the 21 unions, and the President of the Brotherhood of Railway Trainmen was personally in attendance at that meeting and after some 8 or 9 hours of extended explanation of the bill and the agreement the 21 unions unanimously endorsed the proposed legislation and the agreement,..."

Full texts of the letter of President Roosevelt and the agreements above described appear in Hearings before Committee on Interstate and Foreign Commerce, House of Representatives, 79th Cong., 1st Sess. on H. R. 1362 (1945), Pt. II, pp. 643-656. The President of the Association of American Railroads testified in 1945 that he had contemplated that future legislative changes in the Railroad Retirement Act would be subject to the same collective bargaining procedures as the original Act. He stated (*ibid.*, pp. 659-661):

"I have gone into the history of this piece of collective bargaining in some detail, because I believe it offers a picture of joint action between management and labor unparalled in the industrial record of the United States....

"There was no specific agreement between railroads and railroad labor, at the time of this collective bargaining procedure in 1937, as to future changes, if any, in the railroad retirement plan then agreed upon. However, my own thought at the time, and since, was that any substantial change in the plan would be subjected to the same procedure of collective bargaining. In fact, this seemed to be the thought of all of us, on both sides, at that time."

For other descriptions of the conferences and negotiations between the railroads and the railway labor organiza-

tions which preceded the enactment of the Railroad Retirement Act of 1937, see 81 Cong. Rec. 6084-6085, 6227; 92 Cong. Rec. 8262, 8280, 10003-10004, 10006; Hearings, House Subcommittee on Interstate and Foreign Commerce, on H. R. 9706, 76th Cong., 3d Sess., June 1940, p. 82, Hearings before Subcommittee on Interstate and Foreign Commerce, Senate, on S. 293, 79th Cong., 1st Sess., July 1945, pp. 40-41, 94-95, 119-123, 141, 149, 163, 275, 277; Hearings, House Committee on Interstate and Foreign Commerce on H. R. 1362, 79th Cong., 1st Sess. (1945), pp. 338-340, 343-345, 417-418, 478, 643-656, 659-663, 665, 676-677, 683, 685-686, 699, 795.

The railway labor organizations and the railroads negotiated extensively with respect to a federal railroad unemployment insurance act. (See Hearings before a Subcommittee of the Committee on Interstate and Foreign Commerce, House, on H. R. 10127, 75th Cong. 3d Sess., May and June, 1938, pp. 21, 146, 203; Hearings, before House Subcommittee on Interstate and Foreign Commerce on H. R. 9706, 76th Cong., 3d Sess., June 1940, pp. 82, 83; Hearings before Senate Subcommittee on Interstate and Foreign Commerce on S. 293, 79th Cong., 1st Sess., July 1945, pp. 94-95; Hearings, House Committee on Interstate and Foreign Commerce, on H. R. 1362, 79th Cong., 1st Sess., March 1945, pp. 699-700, 948). They were unable to reach an agreement on the original act but they did reach agreement on the various amendments which were adopted before the statute went into actual operation (84 Cong. Rec. 6631). And they continued from time to time to negotiate and bargain about the type of legislation which they desired the Congress to enact and in 1940 reached agreement on many basic changes in the Railroad Unemployment Insurance Act. Hearings before Committee on Interstate and Foreign Commerce, House, on H. R. 9706, 76th Cong., 3d Sess., June 14, 1940, pp. 15, 22, 24, 26, 86, 87, 143; 86 Cong. Rec. 5522, 9645, 12877.

The 1948, 1951, and 1957 amendments to the Railroad Retirement and Unemployment Insurance Acts were all negotiated in collective bargaining between the railroads and the railway labor organizations and presented to Congress as agreed-upon bills. Congress adopted the 1948 and 1951 amendments on this basis. With respect to the 1948 Amendment to the Railroad Retirement and Unemployment Insurance Acts, providing for an increase of 20% in the retirement annuities for railroad workers and other improvements, its sponsor in Congress stated (94 Cong. Rec. 7437):

> "As I stated when I introduced this bill H. R. 6766, it is the product of an agreement between railroad labor and railroad management. Their action in this instance is indeed a continuation of the spirit of mutual agreement upon which the Railroad Retirement Act of 1937 was based. It will be recalled that the basic railroad retirement system was the result of agreement between labor and railroad management."

To the same effect see 94 Cong. Rec. 6814-6815, 7439, 7440, 7443-7445, 7933; Hearings, House Committee on Interstate and Foreign Commerce, on H. R. 6766, 80th Cong. 2d Sess., June 2, 1948, pp. 6-7, 10.

With respect to their agreement on the 1951 amendments to these statutes see the following statement on the floor of the Senate (97 Cong. Rec. 13529):

> "Mr. Hill: . . . to be more specific, the Railroad Labor Executives' Association, representing 80% of all railroad employees, and the Brotherhood of Railroad Trainmen, which represents 9% of such employees, which organizations were sharply in disagreement, are in agreement with the provisions of the conference report. I am happy to advise also that the Association of American Railroads, representing railroad management, is also in accord with the terms of the conference report."

To the same effect see 97 Cong. Rec. 13642.

When amendments were introduced in 1957 in Congress, their sponsor in the House stated (103 Cong. Rec. 6305):

> "Mr. Harris: Mr. Speaker, at the joint request of the Association of American Railroads and the Railway Labor Executives' Association, I am introducing a bill, prepared by the Railroad Retirement Board, to amend The Railroad Retirement Act and The Railroad Unemployment Insurance Act."

A similar statement was made in the Senate. 103 Cong. Rec. 6486.

On the state level similar activity has taken place with respect to all sorts of legislation regarding safety, sanitation, prompt payment of wages, check cashing facilities, and many other matters.

The record is replete with instances of the type of legislation in which labor organizations interest themselves, and in specific legislation in which some of the defendant labor organizations interested themselves. For example, plaintiffs introduced an exhibit to show that the Brotherhood of Railway Clerks engages in efforts to influence legislation of various types in various states. P. Exh. 229. But that document, and succeeding issues of "Legislative Facts" (P. Exhibits 230, 231) show the types of legislation in which that organization interests itself. First and foremost, are the Railroad Retirement and Unemployment Insurance Acts, the railroad equivalents of state unemployment insurance laws and the Social Security Act, as supplemented in other industries by collective bargaining agreements. (The record contains literally hundreds of instances showing the great interest and substantial activity of all the labor organization defendants, as well as other railway labor organizations, in these two subjects.) Another is the Federal Employers' Liability Act. A third type of legislative activity pertains to efforts to equalize the competitive positions of railroads with other forms of

transportation, thus protecting the work of railroad
ployees. Another is legislation directed to safet
reduce the physical hazards of railroad employment.
legislative activity in which it engages seeks to p
the purchasing power of wage earners. (Exh. 229, pp.

There are three model bills which this Brotherhood
to have enacted in all the States, and has had thu
some small measure of success. The first would pr
employers that require medical examinations of thei
ployees, a common practice on the railroads, from cha
the employees for such examinations. The second
require employers that pay their employees by che
make arrangements under which the employees could
those checks without being charged a fee. The third
establish certain standards of health and sanitati
working conditions. (Plaintiffs Exh. 229, pp. 6-8).

With respect to state legislative activities of the B
erhood of Maintenance of Way Employes, we urg
reading of pages 80 through 82 of the Brief of the
dence. Orig. rec. 269-71. All of it would be worth
ing. It shows, among other things, the efforts of th
ganization to obtain through collective bargaining p
tion of those they represent from the elements whil
ing track motor cars in all kinds of weather, their ins
to obtain such arrangements by agreement with the
roads, and their resort to legislative activities. It
also that in many states all other workers were pro
by certain sanitation and health laws that excepted
workers, and the efforts of this organization to re
such exception. It refers to the unsafe and unsan
housing facilities which many railroads furnish thes
ployees who live for substantial periods in camp
It describes other types of legislation in which this o
zation interests itself of obvious direct and immediat
cern to the employees it represents.

Any close analysis of the relationship between le
tive activity and collective bargaining in the railro

dustry will disclose that often the legislative device has been used to establish as standards for the minority non-agreeing railroads those standards to which the majority of the carriers are willing to adhere. Instead of securing by agreement with the willing railroads benefits which might place them at a competitive disadvantage with other unwilling railroads, benefits have been bargained or legislated on a national basis for all railroads. In those matters where the conformity of a minority required legislative action or the railroads wanted policing and enforcement by governmental agencies, the majority of the railroads acting through the Association of American Railroads and the majority of employees acting through the Railway Labor Executives' Association have secured legislation which achieved for their collectively bargained arrangements a uniformity and permanence difficult if not impossible to achieve by merely a collective bargaining contract.

Political activity and the expansion of legislative activity beyond mere bread and butter issues for railroad unions have been the necessary consequences of effective legislative activity and the type of regulation of employment relationship which the agreed upon legislation has established. When economic issues are to be decided by Congress or by mediation boards, referees, or national emergency boards appointed by the President or other members of the executive department, labor organizations naturally desire to see officials sympathetic to labor's aims elected to office. Likewise, effective political action requires expansion beyond mere bread and butter issues in order to obtain wider political support to help elect sympathetic officials. These broadened issues can in every instance be traced back to railway labor's legitimate efforts to secure the objectives usually sought by collective bargaining. The history of regulation of railroads by legislation and administrative agencies, with respect not

only to labor relations, but all aspects of the
places all collective bargaining efforts in a s
which collective bargaining cannot function effe
realistically without legislative and politial activi

In this setting it is apparent that the legisl
political expenditures of the defendant unions
mately related to collective bargaining objectiv
ceeding from plaintiffs' arguments logically, we
nonsensical conclusion that because the defend
organizations sponsored and supported the enac
Section 2, Eleventh, the application of that legi
them is unconstitutional. Under plaintiffs' theory
way for such legislation to be enacted in an effe
would have been for the proposition to have ari
taneously in Congress and for these organization
refused to testify or state their position concernin
ing railroad representatives as the only witnesse

V. SECTION 2, ELEVENTH VALIDLY SUPERSE INCONSISTENT STATE LAW.

The issues in this case seem clear to us. To us i
that Congress repealed its own prohibition, and
validity of such repeal not only cannot be quest
is not questioned.

Congress also expressly provided that state la
not apply to the subject of the type of union secur
ment which Congress had theretofore prohibited
after ceased to prohibit. Clearly, Congress likew
within its authority in declaring its intention to
state law. The individual appellees argue that
Eleventh of the Railway Labor Act was ineffective
sede state law because it unconstitutionally depri
of rights they might have under state legislation.

It defies rational analysis to argue, as plai
that Congress acted beyond its powers when it su
state law in a field in which Congress may legisla
argument nesessarily is an argument that the seco

of Article VI of the Constitution of the United States is unconstitutional.

Normally, in cases where the applicability of a state statute is challenged on the ground that it has been superseded by federal legislation in a field in which Congress may legislate, the issue is couched in terms of whether Congress intended to preempt the field. See, e.g., *Napier* v. *Atlantic Coast Line R. Co.*, 272 U.S. 605, 611; *Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230. In most such situations the answer is obtained by an analysis of "conflicting indications of congressional will". *Garner* v. *Teamsters Union*, 346 U.S. 485, 488. The problem is one of determining Congressional intent; it has never heretofore been a question of Congressional power to preempt state law in a field where Congress may legislate.

The power of Congress to legislate in the field of labor relations in the railroad industry of course is not subject to question. *Texas & N. O. R. Co.* v. *Brotherhood of Railway Clerks*, 281 U.S. 548, 50 Sup. Ct. 427; *Virginian Ry. Co.* v. *System Federation No. 40*, 300 U.S. 515, 57 Sup. Ct. 592. Certainly no one questions today that Congress had the power to prohibit union shop agreements in the railroad industry, as it did between 1934 and 1951. If Congress can legislate in a field, we had supposed that it was unquestioned, until this case was argued, that it could legislate to the exclusion of state law. As stated above, heretofore when this question arose it came up in terms of not whether Congress could supersede state law in a field it was regulating, but whether it intended to do so.

There is no question that in this case Congress intended to supersede state law. It expressly said so. Section 2, Eleventh commences with the words "Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or territory thereof, or of any State. . . :". Plaintiffs do not argue that Congress did not so intend; indeed, their case is predicated on Congress so intending.

It should hardly b necessary at this time t
that the third clause of Section 8 of Article I of
States Constitution vests the power to regulat
commerce in the federal government. At most
regulate such activities only until Congress indi
state should not do so. Indeed, in many cases,
absence of federal legislation on the subject, st
tion of interstate commerce has been held invali
commerce clause on the ground that the failure
to legislate indicated its intention that the sub
not be regulated, or on the ground that national
was required. See, e.g., *Southern Pacific R. Co.*
325 U.S. 761, 769, and cases there cited; *Morgan*
328 U.S. 373, 386. Thus, to argue that Congress
constitutional powers when it prempts state law
in which it may legislate is to strike down a fed
because of the existence of state laws,—precisel
site of the effect which the Supremacy Clause w
to achieve. If Congress can validly prohibit o
prohibit union shop agreements in the railroad i
it unquestionably has the power to do, its action
come invalid because of an express indication
tends state laws not to apply. Such indication
explicit what otherwise might be argued, that
what Congress did or did not do was intended
the field. It is the Supremacy Clause of the C
not the indication by Congress of what it inte
nullifies any inconsistent state law. *Gibbons* v
Wheat. 1, 210-11. As indicated above, in many
emption is found without an express provision
law shall be superseded. See, e.g., *Garner* v.
Union, 346 U.S. 485; *Weber* v. *Anheuser-Busc*
468; *Pennsylvania* v. *Nelson*, 350 U.S. 497, 76
100 L. Ed. 640; *Public Utilities Comm. of Calif*
States, 355 U.S. 534, 78 S. Ct. 713, 2 L. Ed. 2d 76
cases, once it is determined that a federal statut

times even the absence of a federal statute, conflicts
state provisions, and that Congress evidenced no inten
to keep the state laws in effect, it is the Supremacy Cla
that nullifies the state laws. The presence in the fed
statute of an express intention to supersede merely elim
ates argument as to what Congress intended. Since i
the Supremacy Clause of the Constitution that strikes d
state laws inconsistent with the congressional will wh
Congress may legislate, to argue that by enacting a
otherwise valid Congress exceeded its constitutional
thority because it replaced state regulation, is noth
more than an argument that the second clause of Article
of the Constitution, the Supremacy Clause, is uncon
tutional.

**VI. APPELLANTS WERE DENIED DUE PROCESS OF LAW B
CLASS ACTION BEING SUSTAINED, THE DEFINITION
THE CLASS, AND JUDGMENT BEING RENDERED FOR S
CLASS.**

All the plaintiffs are employed in the craft or c
represented by the Brotherhood of Railway and Steam
Clerks, Freight Handlers, Express and Station Employ
(See supra, Statement of the Case, first footnote.) That
fendant is thus the only defendant union against whom
of the plaintiffs seek relief for themselves as distinguis
from relief for other members of the purported class.

The Stipulation and the Order (R. 101, 167) define
class as those employees and former employees of the
fendant railroads who are "affected by *and opposed to*
union shop agreement *who are also opposed to* the use of
periodic dues" for the challenged purposes. (Italics
plied.) The composition of the class is thus defined by th
basic tests, one objective, "affected by" (not simple, bu
least more or less objective), and two subjective, "oppo
to . . . who are also opposed to," or a combination of me
attitudes.

It is obvious that a class suit, in which a judgment
bind absent persons, cannot be brought unless the requ

ments of due process with respect to such p
fied. *Smith* v. *Swarmspedt*, 16 How. 288,
942; *Macon and Birmingham Railroad Co.*
1, 24; *Hansberry* v. *Lee*, 1940, 311 U.S. 3
85 L. Ed. 22. And such determination mu
upon the basis of allegations, or even admi
the basis of the facts established. *Pacific*
Reiner, (D.C., E.D. La., 1942), 45 F. Sup
Oneida Paper Products Co., (D.C., D.N.J
Supp. 919; *Goldi* v. *Jones* (2d Cir., 1944), 14
Weeks v. *Bareco Oil Co.* (7th Cir., 1941), 12
interests of the persons in the alleged clas
of the trial are among the factors to be c
termining whether a class suit can be mai
and Birmingham R. Co. v. *Gibson*, 85 Ga. 1,

In the light of these principles, let us exa
action" further.

A. A Class, for the Purpose of Adjudicating the Persons, Cannot Be Based Upon Mental

It is well settled that a class action cannc
for an alleged class whose composition is
ascertaining the mental attitude or in th
bination of mental attitudes) of individual
case so holding, as well as the leading cas
of class action generally, is *Hansberry* v.
U.S. 32, 44, where this Court held that a cl
composed of those signers of a restrictiv
wished to enforce it where there were oth
wished to have it declared void. The Court

> "It is plain that in such circumstances
> to be bound by the agreement would
> single class in any litigation brough
> Those who sought to secure its benefi
> it could not be said to be in the sam
> represent those whose interests are i
> formance....

persons are satis-
3, 301-3, 14 L. Ed.
o. v. *Gibson*, 85 Ga.
32, 61 S. Ct. 115,
must be made not
missions, but upon
fic Fire Ins. Co. v.
upp. 703; *Cross* v.
N.J., 1954), 117 F.
, 141 F. 2d 984, 992;
, 125 F. 2d 84. The
class and the locale
e considered in de-
maintained. *Macon*
. 1, 23, 24.
examine this "class

the Rights of Absent
ntal Attitudes.

annot be maintained
n is determined by
n this case, a com-
duals. The leading
case on the subject
y v. *Lee*, 1940, 311
a class could not be
ictive covenant who
e other signers who
ourt said:

nces all those alleged
uld not constitute a
ought to enforce it
enefits by enforcing
same class with or
are in resisting per-

"Because of the dual and potentially confl
terests of those who are putative parties to t
ment in compelling or resisting its performa
impossible to say, solely because they are par
that any two of them are of the same class."

Thus it is fundamental that a class or classes ca
sist of factional groups, as in *Hansberry. Gray* v.
(D.C., E.D. Mich., 1951), 99 F. Supp. 992, affd. 20
(6th Cir., 1952); *Horton v. Citizens Natl. Trust*
Bank, 86 Cal. App. 2d 680, 195 P. 2d 494 (1948);
v. *Radio Corp. of Am.*, (3d Cir., 1950), 183 F. 2d 5
In the last-cited case, some members of a union
either the whole membership of the union or th
bers agreeing with them. The court held that a
could not be sustained on either theory, because
tiffs could not be said to represent all membe
union and *any smaller group classified solely on*
attitude was not a class. The court said:

"It follows that the suit cannot be sustaine
brought on behalf of the whole membership
103 as a class. Nor can it be sustained as br
behalf of all members of Local 103 with the
of defendants Leto and Fox and those membe
in concert with them. *This is but another w*
scribing those members of the Local who a
moment in agreement with the plaintiff. T
such a class as may support a true class suit
too ill-defined and ephemeral in make-up. T
agree with the plaintiff today may be pers
morrow to take sides with his opponents in
In a true class suit the plaintiffs stand in judg
the class and a judgment for or against the
benefits or binds each member of the class p
under the principle of res judicata. *The me*
the class must, therefore, be capable of defin
fication as being either in or out of it. Such
tion would not be possible in a case, such a
fluid fractional groups in a labor union.

". . . the suit, if it may be entertain
regarded as brought by the plaintiff
solely." (Italics supplied.)

To the same effect see *Schatte* v. *Inte*
of Theatrical Stage Employees, 9 Cir., 1
687, certiorari denied, 340 U.S. 828; *I*
toianni (D.C., D. Conn. 1950), 95 F. Sup
shipful Sons of Light Grand Lodge v. *So*
No. 9, 118 Cal. App. 2d 78, 257 P. 2d 464

Since the plaintiffs obviously could not
sent all the employees in their craft,
carve out a group of persons who think al
subjects, and the Courts below found suc
alike people, covering 14 states, the Dis
and other places, represented by one of
tiffs and five intervening plaintiffs who
the almost six years this case had been

Since the members of the purported
from day to day as employees change thei
subject or another, it is unsound to pe
composed of those who are "opposed to"
ments and "who are also opposed" to c
the defendant labor organizations. We
decision in which a court asserted clairvo
without such powers, how could the tri
the membership of the class, based upon
tal attitudes on a combination of subjects,
there are any such persons other than p
the membership of such a class could be
particular time, it would be established
the fleeting moment at which it was ascer
the volatile nature of a class based in p
scopic political views of widely scattered

Authority for a class action in Georgi
Section 37-1002 which provides:

"Members of a numerous class may be rep
a few of the class in litigation which effects
of all."

Although the question appears not to have bee
decided in Georgia, it has some significance that
from which *Code Section 37-1002* was derive
consisted of the citizens of a municipality, a g
tainable by objective standards. *Macon and B*
Railroad Company v. *Gibson*, 85 Ga. 1, 23 (189
Martin, Inc. v. *Anderson-McGriff Hardware C*
291 (1938).

It is more significant that in the cases even
in which class actions have been approved, the
ways been, until this case, objective standards
measure or determine the class. Thus, class a
been held appropriate in litigation involving c
municipality (*Macon and Birmingham Railr*
Gibson, 85 Ga. 1 (1890)); property owners i
(*Kimzey* v. *Michel*, 191 Ga. 158 (1940)); heirs
deceased person (*McDougald* v. *Williford*,
(1854)); creditors of a business (*Schley* v. *Di*
273 (1857); *Allen* v. *Grant*, 122 Ga. 552 (1905)
Wright, 147 Ga. 662 (1918); *Columbus Iron Wor*
164 Ga. 121 (1927); *Clark Milling Co.* v. *Sim*
55 Ga. 505 (1923)); policy-holders of a mutua
company (*Carlton* v. *Southern Mutual Ins. Co.*,
(1884)); members of unincorporated voluntary
(*O'Jay Spread Company* v. *Hicks*, 185 Ga. 507 (1
ard v. *Betts et al.*, 190 Ga. 530 (1940)); and m
church (*New Mission Baptist Church* v. *City*
et al., 200 Ga. 518 (1946); *Slaughter* v. *Land et*
156 (1942); *Bates* v. *Houston*, 66 Ga. 198 (1880)
in the case last cited there was a division in
membership, the minority group had been ide
physical seizure and use of the church property

The members of the class found by the trial court in this case are anonymous, free to move in or out of the class with each National, State, or local election, each disputed issue, each change of opinion, each passing day. Those who are in this class today may be out of it tomorrow. Each affected person remains free to elect or reject the class even after judgment is rendered. Until the class becomes fixed so that the members can be definitely identified, there can be no essential common interest and common right. The significance of this to the union defendants is that they cannot know whose rights have been adjudged adversely to the union defendants even after the final judgment and decree. Thus it subjects them to being held in contempt for violating the injunction without knowing they have done so; they may enforce the agreement against certain persons believing them to be outside the purported class, and be wrong in such belief,—and thus be penalized for lacking clairvoyance. This situation, or potential situation, reveals perhaps as clearly as any case the soundness of the rule that a class cannot be based upon mental attitudes.

B. A Class Action May Not Be Maintained Unless It Can Be Determined at the Time the Decree Is Rendered What Persons Are Bound.

It has been stated that a fair test of the right to maintain a class suit is whether a decree would be binding on absent persons asserted to be members of the class. *Bickford's v. Fed. Res. Bank of N.Y.* (D.C., S.D.N.Y. 1933), 5 F. Supp. 875.

The railroad defendants operate lines in Georgia, Florida, North Carolina, South Carolina, Virginia, Tennessee, Kentucky, Ohio, Indiana, Illinois, Missouri, Alabama, Mississippi, Louisiana, and the District of Columbia. (R. 198) There is nothing in the record to show which of the nine railroad defendants operate lines, have employees, or do business, in Georgia.

The decree is not restricted to Bibb County nor to the State of Georgia. It undertakes to operate with respect to all employees of the defendant railroads everywhere who are within the alleged class.

The decree purports to adjudicate rights of individual employees under several union shop agreements, including the right to recover damages by reason of the enforcement of the agreements as to them.

If this were a proper class action, then a judgment against the plaintiffs would be a personal judgment against each member of the class that he had no right to recover initiation fees, dues, and assessments, damages for loss of employment, or even to contest the validity of the union shop agreements. It is established that a judgment in a proper class action precludes all members of the class. *Supreme Tribe of Ben Hur* v. *Cauble* (1921), 255 U.S. 356, 367, 41 S. Ct. 338, 65 L. Ed. 673; *Hartford Life Ins. Co.* v. *Ibs* (1915), 237 U.S. 662, 35 S. Ct. 692, 59 L. Ed. 1165; *Knowles* v. *War Damage Corporation,* (App. D.C., 1948), 171 F. 2d 15; *System Federation No. 91* v. *Reed* (6 Cir. 1950), 180 F. 2d 991; *Advertising Specialty National Ass'n* v. *Federal Trade Commission* (1 Cir. 1956), 238 F. 2d 108; *Bickford's* v. *Federal Reserve Bank of New York* (1933) (D.C., S.D. N.Y.) 5 F. Supp. 875.

This is true even though all members of the class are not within the jurisdiction of the court where the suit is tried. *Supreme Tribe of Ben Hur* v. *Cauble* (1921), 255 U.S. 356, 367, 41 S. Ct. 338, 65 L. Ed. 673; *Advertising Specialty National Ass'n* v. *Federal Trade Commission* (1st Cir. 1956) 238 F. 2d 108, 120. It is principally for this reason that "the members of the class must, therefore, be capable of definite identification as being either in or out of it." See excerpt from *Giordano* v. *Radio Corp of Am.,* 183 F. 2d 558, 560-1 (3d Cir., 1950), and cases cited *supra* therewith.

Here the class, if it had any members other than plaintiffs, was composed of persons scattered at least over 14 states and the District of Columbia. They were not parties

to the action except through the class device. No was made by the plaintiffs or by the Court to give notice by publication or otherwise. The number in in the class was not known—and could not be known each person who otherwise qualified made known his attitude. Yet the Bibb County Superior Court undert decide the rights of all of these silent, unidentified pe and to bind them by a personal judgment which af their property rights. The judgment was in their but it might have been adverse. And as we have judgment is binding in a proper class action if it is a to the class. The absent members cannot play "heads tails you lose." Yet that is exactly what permitting action in this case would invite. If plaintiffs win, could later say they had the requisite mental attitud were included in the cass that won. If plaintiffs ultim lose, those same persons could say they had differen tudes and attack these same defendants on a dif theory. And, supposing plaintiffs lose, how about a ployee who did not have those views when this actio pending and adjudicated but acquired those views How about that same person if plaintiffs win? W only speculate on the answers to such questions, but are to be enjoined we are entitled to know just what enjoined from doing.

C. Claims for Damages in Individual Amounts May Not Subject of a Class Action.

Regardless of whether the trial court decided f against the alleged class represented by the plainti undertook to adjudicate their rights concerning the shop agreements and forever to bind them by its d But the impropriety of the class is eloquently demonst by the failure of the court to award damages to anyo cept to the named plaintiffs. Obviously, the court cou award damages to anyone else unless he came into

identified himself as a member of the class by proving who he was and his state of mind, and proved the amount of the dues, fees, and assessments which he was entitled to recover, or the amount of his damages from loss of employment. Just as obviously, however, members of the purported class without notice of the litigation were not in a position to assert such rights; nor would it be practical, even with notice, for persons residing in Illinois, Indiana, Ohio, Missouri, the District of Columbia, Virginia, Kentucky, Tennessee, Louisiana, Mississippi, North Carolina, South Carolina, Alabama, Florida, and elsewhere to assert such rights in the Superior Court of Bibb County, Georgia. The court in its decree felt impelled to state that although it was adjudicating the monetary claims of three plaintiffs it was not adjudicating monetary claims for any others. R. 107. The fact that such statement was necessary reveals the impropriety of maintaining this case as a class action. If the court cannot adjudicate the claims of the entire "class," then the class device is not properly used.

In *Davies* v. *Columbia Gas & Electric Corp.*, 151 Ohio St. 417, 86 N.E. 2d 603 (1949), which was an action by a plaintiff purporting to represent 700,000 natural gas consumers in the State to recover damages for fraud for secretly diluting natural gas with inert gas, thereby increasing the rates, the court held that a class action would not lie. Similarly, in *Syres* v. *Oil Workers Union*, 257 F. 2d 479 (5th Cir., 1958), it was held that since "wages are, of course, separately and individually earned," a class action to recover loss of wages could not be maintained. Similarly, see *Pemberton* v. *Board of Education etc. of Toledo*, 67 Ohio App. 175, 36 N.E. 2d 170 (1940), in which the court pointed out the wage claims were in separate amounts, for different kinds of services, different hours, different rates, and different responsibilities; that some had lost time, some overtime, and each being a claim for money, the defendant may have a special defense as to each which it is entitled

to make in a jury trial. Similar holdings were m
Schatte v. *International Alliance of Theatrical Sta*
ployees (9 Cir. 1950) 183 F. 2d 685, and in *Mas*
National Bronze and Aluminum Foundry, 159 Ohio S
112 N.E. 2d 15.

In *Weaver et al.* v. *Pasadena Tournament of Roses*
et al., 32 Cal. App. 2d 833, 198 P. 2d 514 (1948) whi
an action by the plaintiffs on behalf of themselv
others similarly situated to recover a statutory pena
wrongful refusal of admission to the Rose Bowl
where the operators advertised 7,500 tickets for sale
general public and closed the box office after sellin
1,500, the Court held that an interest in a common q
of law was not a sufficient "community of interest" re
to authorize a class action because determination
question "would still leave to be litigated the right
other person to recover on his statutory claim in th
of whether he *in reliance* upon the advertised sale, s
line, received an identification stub, was denied
before the promised 7,500 had been sold, presented h
at the Rose Bowl as a 'sober moral person,' dem
admission, tendered the price, and . . . his actual da
as well as was refused, entitling him to recover th
statutory penalty of $100." (Italics supplied)

The Court said further:

> "In the present case there is no ascertainable
> such as the stockholders, bondholders or creditor
> organization. Rather, there is only a large num
> individuals, each of whom may or may not h
> care to assert, a claim against the operators of th
> Rose Bowl Game for the alleged wrongful refu
> admission thereto. . . ." •

• See also, Kentucky Home Mut. Life Ins. Co. v. Dul
Cir. 1951), 190 F. 2d 797; Trailmobile Co. v. Whirls (6 Cir.
154 F. 2d 866, r. on other grounds, 331 U.S. 40, 91 L. Ed
Weeks v. Bareco Oil Co. (7 Cir. 1941), 125 F. 2d 84.

See also, Young v. Klousner Cooperage Co., (1956), 164

The language of the Supreme Court of Georgia in a case involving different substantive issues, *Grand Chapter Order Eastern Star* v. *Wolfe*, 172 Ga. 346, 349, is appropriate to the great number of diverse claims, claimants, and opinions sought to be included in the class here. In that case the Court, dealing only with claims for wounded feelings, said:

> "But is there such a common nexus binding all of these thirty petitioners for damages that it can be said that each one of them having a common interest in the subject-matter, suffered the same injury to his feelings, so as to be compensated in the same amount for injury to his or her reputation? As injury to personal feelings is as variant as the figures produced by the shaking of a kaleidoscope, and the injury to the reputation of one is in each case largely dependent on the particular nature of the reputation possessed by the petitioner, we can not say that the injury inflicted upon any one of the petitioners, so far as feelings and reputation are concerned, is identical to that of any or all of the others."

D. Plaintiffs Are Without Standing to Sue Any Defendant Union Except the One That Represents Their Craft.

There are nine railroad or terminal companies and fifteen labor unions named as defendants in the case.

Section 11 of the Union Shop Agreement provides in part:

> "It shall be construed as a separate agreement by and on behalf of each carrier party hereto and those em-

489, 132 N. E. 2d 206; Wilder v. South Carolina State Highway Department (1955), 228 S. C. 448, 90 S. E. 2d 635; Earle v. Webb et al. (Asbury et al., Intervenors) (1936), 182 S. C. 175, 188 S.E. 798; Horst Von Rochel v. Sesac, Inc. (1955), 145 N.Y.S. 2d 697, aff'd 150 N.Y.S. 2d 152 (1956); Pyper v. Mutual Home & Savings Ass'n (1938), 35 N.E. 2d 736; App. dismissed, 134 O. St. 345, 16 N.W. 2d 424; Cavanagh et al. v. Hutcheson et al., 140 Misc. Rep. 178, 250 N.Y.S. (1931), aff'd. 259 N.Y.S. 967; Felten Truck Line, Inc. v. State Board of Tax Appeals (1958), 183 Kan. 287, 327 P. 2d 836; Burke et al. v. Illinois Bell Telephone Co. (1952), 348 Ill. App. 549, 109 N.E. 2d 358.

ployees represented by each organization o
said carriers as heretofore stated."

Accordingly, there are separate contracts betw
separate employers and fifteen separate labor
tions which are involved, a large number of
agreements.* One of the plaintiffs is "affected"
those agreements, and the other five plaintiffs by
agreement.

The fact that the rights of the persons claime
the purported class arise out of different contract
different contracting parties would seem sufficie
itself to prevent there being the class found by
Dinkes v. *Glen Oaks Village, Inc.*, (1954), 132
138; *Adelson* v. *Sacred Associates Realty Cor*
183 N.Y.S. 265; *Pyper* v. *Mutual Home & Saving*
Dayton, (1938), 35 N.E. 2d 736, appeal dismiss
St. 345, 16 N.E. 2d 424; *Kahlmeyer* v. *Green-W*
tary, (1940) 23 N.Y.S. 2d 17, 27 N.Y.S. 2d 446, 3
138, aff'd, 40 N.E. 2d 650 (1942).

Since none of the complaining plaintiffs asks fo
or could use, any relief against any organization
the Clerks, or could be given any relief against
organization, and the agreements to which other
tions and not the Clerks are parties cannot harm
have no standing to sue any organization but t
The situation is similar with respect to the rai
which none of the plaintiffs is employed, even
have agreements with the Clerks; a union shop
by an employer that is not a plaintiff's employer
plaintiffs no legally recognizable harm. It is
that defendants against whom none of the plain
or can obtain relief should be dismissed from the

* It cannot be assumed that the total number of agree
since the record does not show that each union represent
on each carrier.

Lankford v. *Dockery*, 87 Ga. App. 813, 75 S.E. 2d 340, 341. One may not have judicial redress for the benefit of a class, in respect of a matter in which he is without interest, right, or duty. *Harrigan* v. *Pounds*, 246 N.Y.S. 363, 146 Misc. 666 (1933); *Newark Twentieth Century Taxicab Ass'n* v. *Lerner*, 11 N.J. Super. 363, 78 A. 2d 315 (1951); *State* v. *Laramie Rivers Co.*, 59 Wyo. 9, 136 P. 2d 487 (1943).

Thus even if a class suit is proper, it must be limited to employees within the craft or class of clerks employed by the two defendant railroads by which plaintiffs are employed. The operation and activities of the defendant unions differ widely, and plaintiffs may complain only of those that concern them. The record shows that the defendant unions have different fees and dues. The publications they issue differ substantially. Some have death benefits, others do not. They contribute to legislative and political activity in widely different degrees and each in its own particular fashion. Some do not participate at all in some of the activities of which plaintiffs complain. Numerous other differences are described below (Point VIII). Those who would represent a class may sue only with respect to matters that affect them, and not with respect to matters that affect only others. See *Harrigan* v. *Pounds*, 265 N.Y.S. 676, 684-6, 239 App. Div. (1933), where the Court said:

> "It seems to us that with regard to the sixty-three deposit agreements to which none of the plaintiffs is a party, they have no capacity to sue to rescind for a fraud perpetrated on parties to an agreement, who claim no fraud and, as far as the record is concerned, are perfectly content with their investments.
>
> . . . . . .
>
> "In attempting to maintain this action and to meet this weakness in their position as to the remaining sixty-three agreements, the plaintiffs allege in their complaint, which is upon information and belief, that other persons, though not named as parties herein and

holding and owning similar bonds and ce
deposit, have expressed their desire to joi
in this action, and inasmuch as such perso
numerous and it would be impracticable to
all before the court in the first instance, a
as said persons have common interest with
tiffs and are similarly situated, this actio
by the plaintiffs herein on behalf of the
in a representative capacity on behalf of a
ers and holders similarly situated. . . .

"The appellants point out that this is th
ment in all the papers before the court h
plaintiffs attempt to justify their suit to
to remove the committeemen under sixty
rate and distinct agreements to which non
a party and under which none of them has
claims, or interest."

E. Plaintiffs May Not Claim Relief for Others They for Themselves.

The only relief claimed by plaintiffs for the
only relief they could claim upon the basis of
is injunctive relief against the union shop ag
the return of dues and fees they had paid pur
agreement. Included in the purported "class
have undertaken to represent are former empl
defendant railroads whose employment has
nated for failure to meet the condition of the
Although the order of the Superior Court is
clear in this respect, it apparently intended t
also the rights of such persons to damages,
amounts thereof for such loss of employment
tory and perhaps even punitive,—damages whi
do not claim for themselves.

The claims of plaintiffs and of any persons
as a result of enforcement of the collective
agreements are quite different. It is well esta
plaintiffs in a class action may not seek reli
members of the alleged class which they do

themselves and which they are not entitled to recove
themselves. *Brown* v. *Bd. of Trustees*, 187 F. 2d 2
(5th Cir., 1951); *Martinez* v. *Maverick County Water*
trol and Imp. Dist., 219 F. 2d 666 (5th Cir., 1955); *P*
v. *Bd. of Educational Lands and Funds*, 103 F. Supp
(D.C., N.D. Nebr., 1951). For the rights to be establ
in a class suit for the benefit of those for whom the s
brought can rise no higher than the rights of the p
tiffs. *Young* v. *Klausner Cooperage Co.*, 164 O. St.
132 N.E. 2d 206 (1956); *Davies* v. *Columbia Gas & El*
Corp., 151 O. St. 417, 86 N.E. 2d 603 (1949); *State* v.
mie Rivers Co., 59 Wyo. 9, 28, 136 P. 2d 487, 492 (1
Matthews v. *Landowners Oil Ass'n et al.*, (Tex. Ct.
204 S.W. 2d 647, citing 39 Am. Jur. 921.

Of course, this aspect of the Order below is erro
for the additional reason discussed in Point VI, C, *S*
that individual claims in individual amounts based o
dividual facts may not be the subject of a class actio

VII. THE APPELLANT UNIONS ACTED WITHIN THEIR THORITY IN EXECUTING THE UNION SHOP AGREEMEN

The trial court found that the defendant labor orga
tions acted "without authority from the employees r
sented by them" and "without affording said empl
any opportunity to express themselves with respect t
to," when they entered into the union shop agreements
involved. R, 101-2, 230. This finding affords no p
basis for the order enjoining enforcement of the
shop agreements.

Although paragraph 12 of the Stipulation (R. 168)
tains statements in substance the same as the q
phrases, it qualifies the statement concerning absen
authority from the particular employees with "other
such authority as might be implied from each labor
defendant being the collective bargaining represent
. . . for the purposes of the Railway Labor Act . . .

states also that "the usual processes
unions in determining collective bargai
followed," a further qualification omitte

The authority of the defendant unions t
bargaining representatives for the resp
classes of the employees of the defenda
matter of law includes within it the aut
union shop agreement. Once a union is
majority of the employees in a craft or
representative for purposes of the Railwa
union without any specific conferral of
employees represented has the right to
ment authorized by the Railway Labor Ac

In the field of collective bargaining,
authority of the collective bargaining
determined not merely by the authority
the craft intend to confer, as in the ordin
cipal and agent, but by the provisions
statutes. *J. I. Case* v. *N.L.R.B.*, 321 U.S.
Telegraphers v. *Ry. Express Agency*, 32
collective agreement made by the collecti
governs each individual, regardless of whe
of the terms or wanted the agreement
changed. *Order of R. Telegraphers*
Agency, supra.

Numerous authorities, and the reasoni
upholding the authority of a collective bar
tative to make such agreements as those i
sory retirement of conductors at the age
out specific authorization from its constitu
applicable here. See *Lamon* v. *Georgia S*
Co., 1955, 212 Ga. 63, 68-69, 90 S.E. 2d 6
Mullans v. *Kans. Okla. & G. Ry. Co.* (E.
129 F. Supp. 157, 159, affd. (10 Cir. 1956
cert. den. 351 U.S. 918; *Goodin* v. *Clinchf*
125 F. Supp. 441, affd. (6 Cir. 1956), 229

of the defendant
aining policy were
ted below.
s to act as collective
espective crafts or
dant railroads as a
uthority to make a
is the choice of a
or class to be their
way Labor Act, that
of authority by the
to make any agree-
Act.
g, the scope of the
g representative is
ity the members of
dinary case of prin-
ons of the relevant
.S. 332; *Order of R.*
321 U.S. 342. The
ective representative
whether he approves
t made or wants it
rs v. *Ry. Express*

soning behind them,
bargaining represen-
se imposing compul-
age of seventy with-
stituency are equally
ia Southern Railway
2d 658, 662-663; *Mc-*
(E. D. Okla. 1955),
1956), 229 F. 2d 50,
nchfield R. Co., 1954,
, 229 F. 2d 578, cert.

den. 351 U.S. 953. And the Supreme Court of No
lina in its decision in *Hudson* v. *Atlantic Coast*
road Co., 1955, 242 N.E. 650, 663-665, 89 S.E. 2d
451, applied the same reasoning and authoritie
that no specific authorization from members of
or class was prerequisite to a union's authority
into a union shop agreement. The Supreme Court
Carolina said:

"Appellees further contend, and the court
facts, that defendant unions, through their
cers, acted arbitrarily and in disregard of t
of the employees of the respective crafts o
In last analysis, the only evidence support
findings is to the effect that the chief office
fendant unions, notwithstanding known opp
some employees to the making of a union sh
ment, made demands on defendant carrier
agreement without ascertaining by refere
otherwise the wishes of a majority of the
within the respective crafts. Admittedly,
unions since 5 February, 1951, had been ende
negotiate a union shop agreement with defe
rier. The evidence dispels any suggestion tha
ant unions' efforts to obtain a union shop a
were conducted in secrecy; rather, the con
inescapable that the opposing expressions b
arose from the fact that the efforts of the b
agents were well known. . . .

"The inquiry narrows to this question: Mus
gaining agent, before making demands for
shop agreement, first ascertain the wishes o
ployees of the craft or class it represents w
ence thereto and be governed by the wishes o
jority as expressed in a referendum or othe

"We are constrained to hold that such re
was not required.

• • • • • • •

"It must be concluded that the intent of
as presently expressed in the Railway Labo
that the employees in a collective bargaining
ing selected their representative, authorized

resentative to negotiate and act f
Union Shop Amendment, by its ter
negotiation of a union shop agreeme
ject for collective bargaining by th
such collective bargaining unit. T
ship requirement is obligatory un
agreement only as long as the uni
mains such bargaining agent. Sho
the collective bargaining unit desire
bargaining agent, or none, the pro
available. 45 U.S.C.A. 152. The r
so chosen is at liberty to reopen an
collective bargaining agreement, eli
shop provision. The injunction in
in effect since 23 April, 1953. Pla
similarly situated have had ample t
representatives, if such was desired
the respective crafts. But no dem
mination of bargaining representati
since 1946. The conclusion reached
Goodwin v. *Clinchfield R.R. Co.*, E.
F. Supp. 441; *Austin* v. *Southern*
App. 2d 292, 123 P. 2d 39."

Likewise squarely in point is *Cook*
Sleeping Car Porters, 1958, Mo., 309 S.
certiorari denied, 358 U.S. 817, where t
of Missouri in upholding a union shop
a similar attack, said:

"They say that the contract w
executed without notice to them or
be heard on the question. We find
the act or in the cases of such a no
In *McMullans* v. *Kan-Okla. & Gulf*
229 F. 2d 50, certiorari denied 351 U
1450, it was held that notice to indiv
conductors was not required when
agent and the carrier so amended th
as to provide for compulsory retire
"The courts cannot write a requ
into the Act, and so far as we can
quired under the present circumsta

for them; and the
erms, recognizes the
ent as a proper sub-
he representative of
The union member-
nder a union shop
nion so selected re-
hould a majority of
re to choose another
rocedure therefor is
e new representative
and renegotiate any
eliminating the union
in this case has been
Plaintiffs and others
le time to choose new
red by a majority of
emand for a redeter-
tatives has been made
hed is in accord with
E. D. Tenn. 1954, 125
rn Pac. Co., 50 Calif.,

ok v. *Brotherhood of*
S.W. 2d 579, 587-588,
re the Supreme Court
hop agreement against

t was negotiated and
or any opportunity to
find no requirement in
a notice to individuals
Gulf Ry., Inc., 10 Cir.,
351 U.S. 918, 100 L. Ed.
individual complaining
when their bargaining
led the existing contract
retirement at age 70.
requirement of notice
e can see none was re-
mstances."

So far as we know, the *Hudson* and *Cook* ca
only decisions by appellate courts squarely in p
involving the specific issue of the necessity
ascertaining the wishes of the members of the
taining specific authority from the members
as a requisite to the validity of a union shop
under the Railway Labor Act. For other case
various provisions of agreements found objec
some members of the craft or class, in which th
rejected the argument that the agreement was
cause of the absence of notice to, or specific a
by, the members of the craft or class, see *Mars*
tral of Georgia Ry., D.C. S.D., Ga., 1956, 147 F
858; *McMullans* v. *Kansas, Okla. & Gulf Ry.*
Okla., 1955, 129 F. Supp. 157, 159, affirmed 1
229 F. 2d 50, certiorari denied 351 U.S. 918; *Na*
tem Federation No. 91, W. D. Ky., 1955, 127 F
889-890; *Goodin* v. *Clinchfield Railroad Co.*, 1
Supp. 441, 452, affirmed 6 Cir., 229 F. 2d 57
denied 351 U.S. 953; *Austin* v. *Southern Pac.*
Calif. App. 2d 292, 297, 123 P. 2d 39, 42; *Lamo*
Southern Ry. Co., 1955, 212 Ga. 63, 68-9, 90
662-3.

Plaintiffs will presumably, as they have done
cite *Steele* v. *L. & N.R. Co.*, 323 U.S. 192, 65
Graham v. *Southern Ry. Co.*, 74 F. Supp. 663, 3
70 S. Ct. 14; *Bro. of R. Trainmen* v. *Howard*, 3
72 S. Ct. 1022, to show that this Court has held
lective bargaining agreements beyond the auth
lective bargaining representatives. Those case
stances of collective bargaining representati
agreements that employers take work away f
employees who had been performing it and
assign the work to white employees. In those
held that such agreement was in violation of
tion of the representative to represent the en
represented, fairly and impartially. In those

selves, however, this Court expressly recognized that a collective agreement may have consequences disadvantageous to the interests of some members of the craft, and that such consequences would not affect the validity of the agreement. For example, in the *Steele case,* after holding invalid the agreement there involved, this Court stated that "this does not mean that the statutor, representative of a craft is barred from making contracts which may have unfavorable effects on some members of the craft represented." 323 U.S. 192, 203. Those cases, as stated by Judge Hand in the first *Otten* case, are "toto coelu" different from the question we have here. 205 F. 2d 58, 60.

The test uniformly applied in such cases is whether the representative has taken action which it thinks is for the benefit of the craft as a whole, not whether any individuals are adversely affected, and not whether the representative's judgment is a sound one so long as it is sincere. *Ford Motor Co.* v. *Huffman,* 345 U.S. 330; *Haynes* v. *United Chemical Workers,* 190 Tenn. 165, 228 S.W. 2d 101; *Aeronautical Lodge* v. *Campbell,* 337 U.S. 521; *Hartley* v. *Brotherhood,* 283 Mich. 201, 277 N.W. 885. That it is a proper objective of collective bargaining for a representative to seek a union shop agreement is expressly provided in the Act under consideration. Section 2, Eleventh of the Railway Labor Act, under which the defendant unions are established as the collective bargaining representatives, provides:

> ". . . any carrier or carriers as defined in this Act and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this Act *shall be permitted*—
>
> (a) to make agreements, requiring, as a condition of continued employment, that . . . all employees shall become members of the labor organization representing their craft or class."

There is no room here for statutory interpretation; so far as the question here is concerned, no statute could more clearly authorize the union to do what it did and what is here challenged as not within its authority as a statutory collective bargaining representative.

Even before that legislation, and but for the prohibitions of the pre-existing legislation, it was universally recognized that a union security agreement was a traditional objective of collective bargaining. In *Colgate-Palmolive-Peet Co.* v. *N.L.R.B.*, 338 U.S. 335, this Court stated (at pp. 362-3):

> "One of the oldest techniques in the art of collective bargaining is the closed shop. . . . Congress knew that a closed shop would interfere with freedom of employees to organize in another union and would, if used, lead inevitably to discrimination in tenure of employment. . . . It is not necessary for us to justify the policy of Congress. It is enough that we find it in the statute. . . . The Board cannot ignore the plain provisions of a valid contract made in accordance with the letter and spirit of the statute and reform it to conform to the Board's idea of correct policy."

Plaintiffs argue also that because prior to January 10, 1951, a union shop was prohibited in the railroad industry by the Railway Labor Act, somehow it is beyond the authority of a collective bargaining representative now to negotiate such an agreement although it is no longer prohibited. The reasoning behind this argument is somewhat obscure and difficult to follow. It seems to be directed toward an argument that some of the defendant unions became collective bargaining representatives on the railroad defendants during the 17-year period petween 1934 and 1951 that a union shop in the railroad industry was prohibited. R. 169-71. The argument seems to proceed that no one can now know what collective bargaining representative the craft would have chosen had it known that such representative would some time no longer be pro-

hibited from seeking a union shop, and the conc
seems to be drawn that since the representative
chosen could not legally have obtained a union shop
ment it cannot be supposed that the same represen
would have been selected or accepted if a union shop
ment were then within the ambit of permissible objec

This may be so, or it may not be so, as plaintiffs a
to argue. The ultimate conclusion they draw is that
fore the representative has not been authorized to se
obtain a union shop. Without going into details,
enough to point out that the scope of the author
ascertained primarily from what the Railway Labo
provides; at least it includes what the Railway Labo
provides shall be included within the scope of coll
bargaining. And indubitably the Railway Labor Ac
authorizes a collective bargaining representative to s
union shop agreement. To be sure, some members
craft may prefer not to have such an agreement. But
an agreement became a permissible objective on Ja
10, 1951. Less than a month later the appellant u
served a formal notice under section 6 of the Ra
Labor Act that they wanted such an agreement. A
over two years later they obtained such an agreement
the railroad defendants. During that period none
plaintiffs made any effort to have any change made i
accredited collective bargaining representative, an
such effort has been made in the additional period of
years since then. Plaintiffs' argument, if we under
it, seems to be that Congress having legislated o
authority of collective bargaining representatives and
hibited them from obtaining a union shop agreeme
without authority to amend such prohibition.

Any time a majority of the craft is dissatisfied with
their representative is doing or has done, they can see
obtain a different one. No such effort has been made i
more than nine years since the defendant unions st
seeking a union shop agreement or in the seven years
they obtained such an agreement with the railroa

fendants. And if any such effort should be made and should be successful, the representative so chosen would have authority to enter into a union shop agreement, whatever the preferenc of any individual members of the craft. Railway Labor Act, section 2, Eleventh; *Order of Railroad Telegraphers* v. *Railway Express Agency*, 321 U.S. 342.

VIII. APPELLANTS WERE DENIED DUE PROCESS OF LAW BY FINDINGS, A JUDGMENT AND A DECREE BEING ENTERED BEYOND THE JURISDICTION OF THE COURTS BELOW.

A. The Findings

In the final "Findings, Conclusions, Order, Judgment and Decree" the trial court made a number of findings of fact. It made the same findings of fact with respect to all the labor organization defendants, although the evidence and stipulation with respect to those defendants differed materially, and much of the matter in the stipulation cannot be attributed to any particular labor organization defendant. In addition, some of the findings have not even a suggestion of support in the record.

An examination of the final order and stipulation, upon which much of the findings is predicated, shows how inadequate is the support for much of what the court found.

In paragraph 1 of the final order the court found that the individual defendants represent all the members of the labor organization defendants. R. 101. But there is nothing anywhere in the record to show who the individual defendants are or what authority they have or are otherwise in a position to represent anybody. R. 230, 237.

In paragraph 4 of the order the court found that the union shop agreement imposed a condition of employment or continued employment. R. 231. There is absolutely nothing in the record to show that the union shop agreements impose any condition of employment. R. 205. The Railway Labor Act permits a union shop agreement imposing a condition of continued employment, and the agreements themselves very explicitly impose only a condition of continued employment and not a condition of employment. R. 205.

In paragraph 5 of the order the trial court found funds collected by the labor organization defendants plaintiffs were used to support the political campaig candidates fo. federal office and that the funds we used both by each of the labor union defendants sepa and by all the labor union defendants collectively in cert among themselves and with other organization parties to this action, and that such candidates wer posed by the plaintiffs and the class they repr R. 103, 231. But there is nothing in the record to that any of the labor organizations so use any funds even if there were any such showing, there is nothi the record to show that such candidates were oppos plaintiffs or the class they represent. Furthermore, tributions to such campaign funds would probabl claimed to be in violation of the Federal Corrupt Pra Act, and plaintiffs expressly disavowed any reliance violation of the Corrupt Practices Act. R. 232. I same paragraph the trial court found that the said were so used and used also to support other candidat public office by direct and indirect financial contrib both by each of the labor union defendants separatel by all of them collectively. But as we show below stipulation states only that "some" of the local lodg "some" of the labor organization defendants spend m in state and local elections; there is nothing in the r to identify further such local lodges or to show tha of them are local lodges to which any of the plaintif intervening plaintiffs or members of the purported they represent would pay any funds under the union agreement or that ony of said local lodges are lodg any labor organization that represents any of the plai or intervening plaintiffs or members of any purp class. Further, none of the defendants are local lod

In paragraph 6 of the order the trial court found the labor organization defendants used the funds coll from plaintiffs and the members of the purported clas impose upon plaintiffs and the class they represen

well as upon the general public, conformity" to "certain political and economic doctrines, concepts and ideologies" and conformity to "legislative programs". R. 103, 233. There is nothing in the record to show that any of the union defendants impose on plaintiffs or anyone else conformity to any doctrines, concepts, ideologies, or legislative programs. and the trial court made no factual findings to support such conclusion. Indeed, under the terms of the union shop agreements themselves the labor organization defendants could not impose any conformity to any doctrines or concepts or programs. The agreements themselves, as well as Section 2, Eleventh, provide that if membership in the labor organization is denied or terminated for any reason other than the non-payment of uniform dues, fees, and assessments (not including fines and penalties), the union shop agreement would not be applicable to any such person. Under those provisions, no one can be required to conform to any ideologies or concepts or programs; indeed, he is free to oppose them. See *Allen* v. *Southern Ry. Co.*, 249 N.C. 491, 107 S.E. 2d 125.

In paragraph 10 of the order the court held that "the labor union defendants, by their commingling of funds used for collective bargaining purposes and activities and those used for the complained of purposes and activities . . . have made it impossible to segregate the amount of dues collected . . . which are . . . used for collective bargaining purposes from those which are . . . used for the complained of purposes and activities. . . ." R. 104, 236. There is simply nothing whatever in the record to show what books or accounts are kept by the labor organization defendants, or to show that they commingle any such funds or any other funds, or to show that anything any of the labor organization defendants has done has made it impossible for plaintiffs to do anything, or to show whether it would be impossible or difficult to ascertain what amounts of funds they expend for any particular purpose.

Obviously, the principal support for the findings of the court must have been the facts and conclusion contained

in the stipulation. We think it plain that the t
took every item in the stipulation which might
cable to one or more of the defendants, and thos
tions with respect to which it cannot be deter
whom the stipulation is applicable, and every it
duced in the record other than through the s
which might be applicable to one or more of
defendants, and treated all such material as pr
respect to all the union defendants. The same
exists with respect to findings made concerning
tiffs. For example:

Paragraph 21 of the stipulation of facts st
"some of the legislative and political activities re
. . . are carried out by some of the individual loc
. . . and in some situations . . . will be carried
cooperative basis." R. 177. There is nothing
which activities are referred to or to identify
lodges that engage in them, or even to show,
the local lodges were identified, that any of them
lodges to which any of the plaintiffs or membe
purported class would be required to pay a
Further, there is nothing to show the situations
the activities would be carried out on a cooperat
or by what local lodges such cooperation woul
ducted. In the same paragraph it is stipulated
"in some instances" the financial support for th
tive and political activities is derived from not
local lodges but the national organization; there i
to show what those instances are or what orga
are involved in them. But the foregoing finding
of this as established for all labor organization d
and all their local lodges.

We do not know to what extent the courts bel
plaintiffs rely upon the payment of death benef
union funds. But the stipulation states only th
of the labor union defendants maintain deat
funds" without further identifying them, and s
ther that "in some instances" benefits are paid

eral funds and "in some instances" are payable only beneficiaries of members in good standing as of some tin ago. R. 178. There is nothing in the stipulation to identif the labor union defendants referred to or to identif either of the instances referred to.

Paragraph 24 of the stipulation provides that the labo union defendants received the literature of the AFL-CIO R. 178. There is nothing in the stipulation to show tha the members of the labor organization defendants receiv such literature. Yet it was indicated below that such li erature constituted a portion of the imposition of "p litical and ideological conformity." R. 103.

Paragraph 29 of the stipulation states that Railwa Labor's Political League received direct grants into i "educational" fund from the general funds of the unio defendants. R. 182. But it is plain from the very ne paragraph of the stipulation that except for trivial an insignificant amounts, obviously nothing more than corre tions of bookkeeping entries, only three of the labor o ganization defendants have ever contributed money RLPL's educational fund. The sentence following th tabulation in paragraph 30 (R. 183-4) again states tha contributions to that fund were received from local lodge of labor union defendants, but there is nothing in the re ord to indicate that any of such local lodges are loc lodges to which any of the plaintiffs or members of th purported class would be required to contribute. Othe portions of the stipulation refer specifically only to certa organizations or except certain organizations, yet the cou below made no distinction among them concerning any its findings. See, e. g., paragraphs 32, 46, 48, 58-64, 185, 189, 192-5.

Similarly, we point to a few instances of the eviden that was applicable to only one, or more but less than a of the labor organization defendants, to show the impr priety of the court making identical findings with respe to all the labor organization defendants. Extensive e hibits were introduced into evidence, to which appellan

could not and did not object, concerning th
State Labor Council. P. Exhs. 305-312. The
filiation of the local lodges affiliated with that
Council was also introduced into the record.
734). A few of such local lodges are affiliate
fendant labor organization. Yet there is not
suggestion that any of such local lodges ar
which any of the plaintiffs or any members
ported class would pay any funds under the
agreements. Indeed, since the local lodges ar
lodges it would appear quite certain that none
tiffs would pay any funds to any of those lodge
of them is employed or lives in Louisiana.

The trial court gave no indication of what
side the stipulation it relied on for any of its
so in directing our attention to what materi
did rely on we consider the material the pl
they relief on.* Plaintiffs stated below, and
will state here, that one of the principal types
on which they rely are the publications of th
labor organizations by which it is alleged su
tions subject the plaintiffs to "brain washi
Pursuant to the stipulation, we furnished
copies of all the monthly publications of all th
labor organizations for a period of two and on
R. 199. These publications, say the plaintiff
a principal instrument of imposing political,
and legislative conformity. But when we look
plaintiffs introduced from this vast mass of
find great differences between what plaintiff
relevant concerning one organization and wh
sidered relevant concerning other organizatio
ample, they could find nothing at all in any p

* Obviously the trial court did not study the entire
case in the fleeting instant between the close of oral
the merits and the announcement of his decision, or
instant between the close of argument on the proposed
announcement that he would sign it as presented.

the Masters, Mates and Pilots or the Marine Engine
Beneficial Association of which to complain. In two a
one-half years of issues of the Railroad Telegrapher th
could find only a list of candidates endorsed by RLPL
the 1956 election. Exhibits 283-5. An examination of t
exhibits introduced from the various journals shows gr
differences in what plaintiffs could find to complain
concerning the contents of those publications. Almost
the material from those publications introduced by
pellants as exhibits consisted of tables of contents or he
lines or suggestions for contributions to various charita
organizations or suggestions for compliance with saf
practices and the like, to show that the scattered items
troduced by plaintiffs, assuming them to be objectionab
were but trivial portions of the whole. E. g., D. Exhs. 1
12-4, 29-30, 34, 38-44, 54-74, 78-88, 92-101, 106-8, 111-2.

A similar situation exists with respect to material int
duced from convention proceedings of the labor organi
tion defendants. Although we furnished a mass of m
terial concerning those conventions (R. 200-1), plainti
found but little they thought significant to their ca
Again, with respect to some organizations, nothing or v
tually nothing was introduced. And what was introduc
varied tremendously from organization to organizati
Much of what plaintiffs offered consisted of speeches ma
by guests at the convention; it is difficult to understa
how any of that material, consisting simply of what so
body else said to a convention, can prove anything
establish a contention of the plaintiffs. Here again, alm
all of what we offered from those proceedings consisted
tables of contents or headlines or the number of pages
the report to show what a picayune portion of the to
proceedings was the material introduced by the plainti
and that the overwhelming mass of what occurred c
sisted of subjects of direct concern to the functioning
a labor organization.

But despite the great differences in the material in
record applicable to the several labor organization

fendants, and despite the fact that with
of the material it is impossible to tell t
tion it applies or whether any of the plai
of the purported class would be affecte
made findings of fact uniformly applicabl
organization defendants, with no subsidia
ing how any of the conclusions was rea
matic that there must be some basis in a
a finding else it must be set aside as
Ohio Gas Co. v. *Public Utilities Comm.*,
And of course the requirements of due
state judicial processes as well as legisla
action. *Brinkerhoff-Faris Co.*, v. *Hill*, 2
682.

B. The Decree.

The substance of the errors in the decr
is discussed in the foregoing sections of
few additional comments concerning c
errors may be helpful.

In the fourth subparagraph of paragra
(R. 104) the trial court held the union sh
be in violation of the constitution, the la
policy of Georgia and contrary to the law
in which the defendant railroads operate
were specified as those which the agreem
no such provision could be specified. A
above, the law and public policy of Geor
in Code of Georgia, Title 54, Chapter 54-
Section 54-901 (a), specifically provides th
unlawful under Georgia law to enter i
union shop agreements in the railroad in

Furthermore, in certain other states in
ern Railway operates it has been held tha
ment here involved was lawful in those s
ers of such states it has been held that a
cal in terms (except for the name of the r
were lawful in those states. Surely it c

th respect to much
to what organiza-
aintiffs or members
ted, the trial court
able to all the labor
liary findings show-
eached. It is axio-
a record to sustain
s arbitrary. *West*
n., 294 U.S. 63, 68.
e process extend to
slative or executive
, 281 U.S. 673, 680.

decree complained of
of this brief, but a
certain individual

graph 8 of the order
shop agreements to
e law, and the public
laws of other states
rate. No provisions
eements violate, and
As we have shown
Georgia, as expressed
54-9, particularly in
es that it shall not be
ter into and enforce
d industry.
s in which the South
l that the very agree-
se states, and in oth-
at agreements identi-
the railroad involved
it cannot be argued

that the courts of Georgia have authority to over
courts of other states as to what is the law in thos
and give relief to residents of those states which th
of those states have held such persons were not en
have.

For example, in *Jarrett* v. *Southern Railway C*
and Brotherhood of Maintenance of Way Employe
Court of Common pleas, County of Oconee, Sout
lina, the same contentions were made as here. T
was decided on August 5, 1958, after a trial, and i
ficially reported. In that case the court held that th
to-work law of the State of South Carolina did no
very terms apply to the very same contract as is
volved, because (unlike the Georgia statute) th
Carolina statute is not retroactive and excepts uni
agreements made before its enactment, and the
was made before the enactment of the South
right-to-work law. The court held also that even h
been no express exception the South Carolina la
not apply because it was superseded by valid fed
islation, but the primary holding was that the cont
valid under South Carolina law itself. The same
was made in *Sams* v. *Bro. of Ry. Clerks* (4 Cir. 19
F. 2d 263. For similar situations, in which ei
identical contract or other contracts having the sa
visions but involving different railroads have be
valid, see *Hudson* v. *A.C.L.*, 242 N.C. 650, 89 S.E.
c.d. 351 U.S. 949; *Allen et al.* v. *Southern Ry. C*
249 N.C. 491, 107 S.E. 2d 125; *Moore* v. *C. & O.*,
273, 93 S.E. 2d 140; *In the Matter of Florida Ea*
Railway Co., U.S.D.C., S.D. Fla., No. 4827-J, C
June 25, 1953, not officially reported, unofficially
32 L.R.R.M. 2534; *Atwell, On Behalf of Himself*
Other Employees of the Southern Railway Co.
Common Interest v. *Southern Railway Company*
ternational Association of Machinists et al., not
reported, Superior Court, Guilford County, Nort
lina, Greensboro Division, decided January 21, 19

Plaintiffs may argue that there are
which there have not been such holdin
are, but, if so, it is because the questio
gated in those states. In every state w
fore been litigated, the validity of the
upheld.

In the fourth subparagraph of par
the court held also that the union sh
their enforcement, and the use of the fu
such agreements as theretofore desc
United States Constitution under the c
thority and violate plaintiffs constituti
dom of thought, freedom of speech, and

We have shown above that the a
United States Constitution referred to
below impose no restrictions on what
unions may do. The court made no sp
plaintiffs can point to nothing in the
terference by any defendant with any
speak, publish, or vote. Certainly ther
interference under the terms of the
ment; as we have shown above, both t
selves and Section 2, Eleventh limit the
union shop agreement to a requirement
uniform dues, fees, and assessments
membership. A denial or termination o
union for any reason other than non-pa
form amounts would leave persons so
requirement of the union shop. Furt
unions and the railroads have done in
under the cloak of federal authority. P
tention of unconstitutionality is predic
Eleventh having superseded state law, b
elsewhere, there was no state law to su
Section 2, Eleventh had never been ena
been perfectly lawful under Georgia l
ments here involved to be enforced.

still other states in
ngs. Perhaps there
on has not been liti-
where it has hereto-
agreement has been

ragraph 8 (R. 104)
hop agreements and
funds collected under
scribed, violate the
cloak of federal au-
tional rights to free-
nd freedom of press.
amendments to the
to by the trial court
at railroads or labor
specific findings, and
e record, to show in-
ny freedom to think.
here could be no such
he union shop agree-
th the contracts them-
the application of the
ment of the payment of
nts as a condition of
ion of membership in a
n-payment of such uni-
so treated free of the
Further, whatever the
ne in Georgia was not
y. Plaintiffs' basic con-
predicated on Section 2
law, but in Georgia, and
to supersede. Thus, if
n enacted, it would have
rgia law for the agree-
ed.

In paragraph 9 of the order (R. 104) the tr
found that the injury to plaintiffs from the comp
conduct will be irreparable. It made no such find
respect to the persons found by it to constitute a c
resented by plaintiffs. There is no other finding
that could furnish any ground for injunctive rel
injunctive relief was granted to plaintiffs and
ported class they represent. With respect to
ported class, there was thus no basis whatever fo
tive relief. And even with respect to the named
the finding of irreparable injury is contradicte
record. The record shows that the greatest a
damage even claimed by any named plaintiff, co
period of more than five years, was $158.25; su
age, for such period, for which judgment was e
the decree, could hardly be considered irr
R. 106, 203-4.

In the final order, the trial court enjoined not
railway company defendants and the labor org
defendants but also the individual defendants fro
ing the union shop agreements in their entirety,
with respect to the plaintiffs and the purported
with respect to everyone, whether or not includ
group the court found to constitute a class. R.
is difficult to understand how plaintiffs could ha
for such relief, or how the court below could hav
it, except that plaintiffs included it in their
order. The pleadings ask for no relief for any
than plaintiffs and members of the alleged class
they represent. Further, the record does not s
any of the individual defendants are or any act
of them has taken or threatened to take nor the r
any such action. There can be no legal basis fo
ing persons simply because their names happen
cluded in the caption of pleadings. Furthermore,
order so sweeping, it overrules the courts of oth
in granting relief to persons who live and work
states whose courts have held they are not entitl

very relief asked for in this case and granted below. For example, in the *Jarrett* case discussed above, a South Carolina court held that Jarrett was not entitled to the very relief given him by the court below. In the *Allen* case, even the trial court granted relief to the named plaintiffs in that case but held that no one else was entitled to relief and that to obtain relief anyone else would have to come personally into court, although that case also was brought as a class action. And the Supreme Court of North Carolina held that even the named plaintiffs were not entitled to relief. It is shocking to suppose that the courts of Georgia will undertake to overrule the courts of other states as to what is lawful in those states and will give relief to citizens of North Carolina and South Carolina, for example, which the courts of those States have held such persons were not entitled to have; and will do so not because it finds the courts of those states to be in error in interpreting and applying the law of those states, and not because it finds the law of Georgia entitles citizens of North Carolina and South Carolina to such relief, but because the law of some third state prohibits union shop agreements. In those two States the union shop agreement involved was the very same agreement involved here. The situation is virtually the same with respect to the decisions mentioned above in other states where the contracts involved were not the identical contracts involved here but differed only with respect to the name of the railroads involved.

The trial court included a proviso to its injunction to the effect that the defendants might at any time petition the court to dissolve the injunction upon a showing that they are no longer engaged "in the improper and unlawful activities described above." Such proviso was error, and denied appellants due process of law, for a number of reasons.

First, the order contains no findings or adjudication that any activities that do not include the enforcement of the union shop agreements are improper or unlawful

Certainly there is no finding, nor was it contended, that efforts by labor organizations to influence legislation they deem of concern to them, and the like, are unlawful. In such situation, the proviso and the order mean that we could petition the court to be permitted to enforce the union shop agreement only upon a showing that we no longer enforce it, a self-contradictory and meaningless order. If the proviso was intended to hold that any of the activities "described above" with relation to legislative or political or economic or ideological matters are improper or unlawful, the holding specifies and can specify no provision of law which any of them violates. The unions have always engaged in such activities, and never have any of them been held or declared unlawful. To a limited extent certain political activities are proscribed by the so-called Corrupt Practices Act, but it is not even argued in this case that a violation of any such act is involved.

C. The Monetary Judgment.

The final order awarded damages to three plaintiffs who had joined the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes under the terms of the union shop agreement and had paid said Brotherhood dues and either an initiation fee or reinstatement fee, said damages in each instance being in the amount of such fees and dues for the period since June 1953, approximately five years. The amount of such fee and dues ranged from $133.50 to $158.25, covering that period. R. 203-4.

Upon sustaining the motion to dismiss on February 4, 1957, the trial court announced that it would upon application enter a supersedeas order in favor of such persons as might become plaintiffs in error to review said order, upon posting a bond in the approximate amount of two years' dues. R. 243. On March 4, 1957, the trial court entered a supersedeas order in favor of the twelve persons who became plaintiffs-in-error, conditioned on said

persons filing a bond in the amount of $66.00
R. 243. All three persons awarded damages in the
order had the opportunity to become plaintiffs-in-
and come under the supersedeas order, and thus to
the monetary damages awarded them. Two of the
plaintiffs Cobb and Davis, were intervening plaintiff
did not become plaintiffs-in-error and file a superse
bond. R. 14, 243. One of the three, plaintiff Street,
an original plaintiff and became a plaintiff-in-error
did not file a bond. R. 1, 243. All three, instead of t
such action, became members of that Brotherhood
paid the fees and dues and continued paying the due
the aggregate amounts set forth in the order. R.
Having elected to make said payments and obtain
privileges and benefits of membership in the Brotherh
they cannot now be heard to argue that they shoul
ceive back the money they paid for the consideration
they elected to receive, and which is not returnable t
Brotherhood, instead of incurring the insignificant
pense, if any expense at all were involved, of posti
bond in the amount of $66.00.

IX. CONCLUSION.

We believe we have demonstrated a multitude of
sons why the judgment below should be reversed. T
are numerous grounds on which this Court might re
and remand for further proceedings to correct proce
errors or various substantive errors which would not
pose of the entire case. But we have shown that the
contentions of plaintiffs are legally unsound, even
struing the mass of evidence most favorably to plain
We submit that the proper disposition of this case by
Court is to reverse the judgment of the Supreme Cou
Georgia and remand the case to that Court with in
tions to reverse the judgment of the Superior Cou
Bibb County with its remittitur to the Superior C

directing it to vacate its judgment and order of December 8, 1958 and to dismiss the case.

Respectfully submitted,

MILTON KRAMER
LESTER P. SCHOENE

SCHOENE AND KRAMER
1625 K Street, N. W.
Washington 6, D. C.

February 15, 1960

APPENDIX A

PROCEDURAL RULINGS IN THE TRIAL COURT DENIED APPELLANTS A OPPORTUNITY TO DEFEND THIS CASE.

A. Procedural Rulings in the Trial Court.

After reversal by the Supreme Court of Georgia o trial court's dismissal of the complaint for failure to a cause of action, the remittitur was received by the court on July 18, 1957. On July 22, 1957 it was mad judgment of the trial court and on the same day the defendants filed their answer to the complaint as ame Plaintiffs objected to the filing of said answer as out of time without a showing of providential caus excusable neglect. On February 18, 1958 the Sup Court announced its ruling that it sustained said obje No written order embodying said ruling was entere record.

On May 8, 1958, the union defendants and plaintiff peared before the trial judge for a pretrial confer At said conference plaintiffs made an oral motion fo court to order the union defendants which are labo ganizations to produce books, writings, and other ments. Over the objection of the union defendants they had had no notice of such motion and had no pected the subject to be raised, and after overruling union defendants' request that consideration of such tion be deferred, the court granted the motion. R. 2 The materials ordered to be produced included "all b records, papers, documents, books of original entry, books, ledgers, vouchers, correspondence, files, min diaries, memoranda, circulars, printed materials, chures" which said defendants or any of their a might have or over which they or their agents might control or custody, "showing or related to" any m which any member of any such organization might paid to any such organization "or affiliates thereof an purposes for which any such monies received" by such organization "were or are being expended, inclu

any and all monies paid by each of the respective organizations to other organizations or individuals and the purposes for which such payments are being, or were made . . .", for the period since June 15, 1953. The defendant unions were further ordered to produce with said materials, officers or agents of said defendants competent and prepared to testify under oath concerning the "identity, nature, contents, accuracy, source, and purpose" of all said materials. R. 65-6, 222. The union defendants made two oral requests for rehearing and reconsideration of the order of May 8, 1958, and on May 30, 1958 filed a written motion which was treated by the court as including a request for rehearing, reargument, and reconsideration of the order of May 8, 1958; so treating it, on the same day it was filed the trial court denied said request. R. 222-3.

On August 14, 1958 a comprehensive stipulation was entered into by all parties. R. 165-205. In said stipulation the union defendants conceded virtually everything plaintiffs might contend concerning them and their associates and affiliates. Under that stipulation the union defendants undertook also to furnish, and furnished to plaintiffs, a huge mass of material, including much that was not within the compass of the order of May 8, 1958, and including voluminous material relating to organizations other than the defendants; the plaintiffs could offer in evidence any of such material and the union defendants would be precluded from objecting to the admission of any such material; the union defendants could not offer as evidence anything except additional portions of documents of which plaintiffs might offer only a part, but union defendants were required to advise plaintiffs, in advance of trial, of such additional portions of such documents of which plaintiffs might offer a part and if plaintiffs chose not to offer a part of such documents the union defendants could offer none of it. R. 163-4, 199-202. After the execution of the stipulation, the objections to the filing of the answer were

withdrawn on September 23, 1958, and the
striking the answer was rescinded. R. 221.

The record in the trial court shows, but the
refused to include it in the Bill of Excepti
ground that it was irrelevant to any question
that depositions were taken from officials of
ganizations which were read into evidence at th
that at the taking of said depositions from
lawyers representing the defendants were
none of them made any objection to any qu
pounded by counsel for the plaintiffs and th
them had any cross-examination. At the trial,
tiffs rested, counsel for the union defendants
by reason of the stipulation they were not off
tional evidence. R. 223.

At the close of all the evidence, including th
tion of more than 600 exhibits over a period of
the union defendants asked for oral argum
merits on the basis of the record after the trans
proceedings should have been completed. Th
nied said request and scheduled closing argum
merits for November 20, 1958, before the tra
completed. Argument was had on November
R. 224. At said argument counsel for the
fendants again objected to oral argument be
that time. R. 224-5.

Immediately after the close of oral argument
orally announced findings of fact. R. 225-6.
then stated that it had reached the conclusio
prayers for relief should be granted, and requ
sel for plaintiffs to prepare an appropriate ord
nish copies to the two groups of defendants
court. R. 227. Counsel for the plaintiffs then
they had been preparing an order for the previo
and offered it to the court. R. 227. Counsel fo
defendants objected to being called upon to st
jections to a proposed order he had never see

court thereupon declared a short recess. R. 227. Upon the resumption of the hearing counsel for the union defendants objected to being required to present argument on the contents of the proposed order on such short notice, and the court thereupon adjourned for the usual luncheon recess of two hours and stated that immediately thereafter it would hear objections to the order as drafted by plaintiffs. R. 228. Upon the resumption of the hearing after said recess counsel for the union defendants again protested against having been given such short time to examine the proposed order and prepare and address argument to it. R. 228. Immediately after the conclusion of the argument on the proposed order the court announced that it would sign the proposed order as presented. R. 228.

B. Discussion

Preliminarily, it should be observed that the series of procedural rulings described above and in the Statement of Facts, was hardly calculated to afford these defendants a fair opportunity to defend the claims made against them. Certainly the combination of those rulings was grossly unfair; all the procedural rulings favored the plaintiffs in prosecuting this action to the detriment of the defense that these appellants could make. Indeed, almost any one of the rulings described would of itself be sufficient to hold that these appellants were denied due process. But the combination of those rulings makes it abundantly clear that after the Supreme Court of Georgia reversed the sustaining of the demurrer in the trial court, it was the determination of the trial court that the ultimate ruling would be against these appellants, no matter what rulings need be made to facilitate that end.

We start with our answer being striken for having been filed out of time. We filed a demurrer to the complaint, with its already multitudinous amendments, as it existed prior to January 29, 1957. We demurred to the complaint

as it then existed, and were willing to stand on to that complaint. But on that day the plain and the trial court accepted over objection, which were the basis of the Supreme Court later holding that the demurrer should not ha tained. On the same day that those amend offered and accepted, the trial court announ would treat the demurrer as addressed to the so amended and so treating it would sustain later, on February 4, 1957, a formal order t was entered. R. 221.

Obviously, no rational person files an answ plaint that has been dismissed. After the Su of Georgia reversed, the mandate was receive court on July 18, 1957, and four days later w judgment of the trial court. On the same day was filed. R. 221. Thus at the very most amendments were part of the complaint, and a maximum of ten days when the answer wa upon request of plaintiffs the trial court he fendants in default for having filed their ans To be sure, the request to strike the answer, a striking it, were later rescinded. Plaintiffs lat apparently they were unwilling to have this c on appeal with an order entered at their reque in default for not having answered allegations that had been dismissed. But in the mea appellants were under the handicap of trying resist procedural motions while in default.

Perhaps the worst miscarriage of justice in the order of May 8, 1958. R. 65-6. The part for a routine pretrial conference to report on of the taking of depositions so that the matt date could be discussed. Without notice, witho motion; without specificity, without an affidav

ment of counsel in his place," * the plaintiffs orally mov
for, and the court granted, an order fantastically beyo
any reasonable specificity that could be sustained. It
quired the labor organization defendants to produce "
books, records, papers, documents, books of original ent
check books, ledgers, vouchers, correspondence, files, m
utes, diaries, memoranda, circulars, printed materials, b
chures" for a five year period "over which they or th
agents might have control or custody," together wi
officers and agents of said defendants competent and p
pared to testify under oath concerning the "identity, natu
contents, accuracy, source, and purpose" of said materia
R. 65-6. Such order was far beyond orders held unreas
ably broad in decisions prior to this case. *Ringwald*
Watkins, 28 Ga. App. 298, 111 S. E. 83; *Branan* v. *N. C. &*
L. R. Co., 119 Ga. 738, 46 S. E. 882; *Virginia-Carolina Che*
Co. v. *Hollis*, 23 Ga. App. 634, 99 S. E. 154. Indeed,
absence of a written motion, and the absence of an affida
or statement of counsel in his place, alone would ren
that order invalid and contrary to law. *Virginia-Caroli*
Chem. Co. v. *Hollis*, 23 Ga. App. 634, 99 S. E. 154. But
court refused to grant these appellants an opportunity
prepare to resist that motion made without notice, althou
they requested it. R. 221-2. Thereafter, the court den
two oral and one written requests for an opportunity
reargue that motion. R. 222-3.

It is apparent, although the trial court refused to inclu
it in the Bill of Exceptions, that the extremely burdenso
nature of that order, requiring the defendants to prod
truckloads of their records, disrupt their operations, a
furnish expert witnesses, drove them into the one-sid

* See Georgia Code, Title 38, Sec. 801, 802, 806, specifica
requiring that before an order to produce may be issued th
must be a motion with specificity on the documents, that the mot
be written, accompanied by an affidavit or "statement of cou
in his place," and heard after reasonable notice.

stipulation. As stated above, the trial c
to include in the Bill of Exceptions, altho
record in the trial court, that officials of
parties to this case were produced by thes
that although two to four lawyers re
defendants or those witnesses were prese
depositions, no objections were made
asked by plaintiffs and no cross-examinati
by any of them. R. 114, 121, 125, 131, 152
Court could take judicial notice that such
not arise and persist through the taking
unless it was agreed in advance, as par
obtaining a stipulation instead of complyi
of May 8, 1958, that we would not object
and would not conduct any cross-examin
reading of those depositions will make it
and it is the fact, that the questions a
written out in advance, with the unders
departure from such prepared questions a
terminate the negotiations.

Another result of that order was the
stipulation that these defendants would
dence offered by plaintiffs, and would off
their own in their defense except additi
such documents of which the plaintiffs m
after being advised in advance by these de
such additional parts they would offer if
some other part. R. 163-4. In addition, the
undertook to answer requests for admis
activities of organizations not parties to t
of which organizations were no longer in e
487-92, R. 277-323. A more unbalanced
difficult to imagine.

Plaintiffs, of course, knew what evid
offer, but these defendants could not k
four days of introducing exhibits, reading

court also refused
ough it was in the
organizations not
se defendants, and
epresenting these
sent at each of the
to any questions
tion was conducted
52. We believe this
ch a situation could
of six depositions,
art of the price of
lying with the order
ect to any questions
nination. Indeed, a
it abundantly clear,
and answers were
erstanding that any
s and answers would

he agreement in the
uld object to no evi-
offer no evidence of
dditional portions of
fs might offer a part
se defendants of what
er if plaintiffs offered
, the union defendants
dmissions concerning
s to this litigation, two
e in existence. Exhibits
nced trial of a case is

evidence they would
not know. Yet, after
eading depositions, and

reading extracts from, or all of, such document
tiffs chose to introduce in evidence, after being
with a huge mass of material by these defendant
below refused to defer final argument on the m
a transcript was available so that these defend
ascertain clearly just what was in the record.
asked for such an opportunity, both before a
closing argument, but it was denied them. R. 22

Perhaps not the most damaging, but probabl
glaring denial of due process in defending this
place at the close of oral argument on the merit
time the court orally announced its ruling
counsel for the plaintiffs to prepare an order a
on counsel for the union defendants and coun
railroad defendants and to furnish a copy to
R. 227. One of counsel for the plaintiffs then
that he and his associates had been preparin
order for 10 days and then and there served e
counsel for the defendants and furnished the co
R. 227. We were directed to state our objectio
order *instanter*, and it was only after much plea
luncheon recess was called during which time, a
things, we could try to prepare our argument on
R. 227-8.

It is elementary that due process of law and
protection of the laws require that defendants
fair opportunity to defend, at least something a
a proportionate opportunity to resist what plai
prepared. See *Frank* v. *State*, 142 Ga. 741, 83
Norman v. *State*, 171 Ga. 527, 529, 156 S. E. 2
Macon v. *Benson*, 175 Ga. 502, 508, 166 S. E. 2
Walker, 206 Ga. 181, 56 S. E. 2d 511; see also *B*
Faris Co. v. *Hill*, 281 U.S. 673, 680, 682. Any
foregoing rulings of the trial court would o
enough to warrant a holding that these defenda
have such opportunity. Certainly the combinati
can leave little doubt.

MOTION OF RAILWAY LABOR EXECUTIVES' ASSOCIATION FOR LEAVE TO FILE A BRIEF ON THE MERITS AS AMICUS CURIAE AND ANNEXED BRIEF

No. 259 H

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL.,
Appellants,

v.

S. B. STREET, ET AL.,
Appellees.

On Appeal from the Supreme Court of Georgia

MOTION OF RAILWAY LABOR EXECUTIVES' ASSOCIATION FOR LEAVE TO FILE A BRIEF ON THE MERITS AS AMICUS CURIAE, AND ANNEXED BRIEF

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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CASES:

IN THE

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OCTOBER TERM, 1959

No. 258

INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL.,
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v.

S. B. STREET, ET AL.,
Appellees.

On Appeal from the Supreme Court of Georgia

MOTION OF RAILWAY LABOR EXECUTIVES' ASSOCIATION FOR LEAVE TO FILE A BRIEF ON THE MERITS AS AMICUS CURIAE.

The Railway Labor Executives' Association respectfully moves the Court for leave to file the annexed brief *amicus curiae* on the merits of the appeal in this case by the International Association of Machinists, *et al.* The consent of the attorney for the appellants and for the railroad appellees [1] has been obtained. The consent of the attorneys for the individual appellees was requested but refused.

[1] The consent of the Railroad Appellees is expressed in terms of "No objection" to the filing of a brief *amicus curiae* by the Association.

I

The Railway Labor Executives' Ass
voluntary unincorporated association loc
ington, D. C., with which are affiliated
standard national and international r
organizations that are the duly authori
tatives of more than 90 per cent of the
employees under the Railway Labor Act.
151 *et seq.*) The names of these indivi
tions are:

American Railway Supervisors' Ass
American Train Dispatchers' Associ
Brotherhood of Locomotive Enginee
Brotherhood of Locomotive Firemen
men
Brotherhood of Maintenance of Wa
Brotherhood of Railroad Signalmen
Brotherhood of Railroad Trainmen
Brotherhood Railway Carmen of Ar
Brotherhood of Railway and Steam
Freight Handlers, Express and S
Employes
Brotherhood of Sleeping Car Porter
Hotel and Restaurant Employees an
International Union
International Association of Machi
International Brotherhood of Boile
Ship Builders, Blacksmiths, Forg
Helpers
International Brotherhood of Electr
International Brotherhood of Firem
International Organization Masters,
Pilots of America
National Marine Engineers' Benefic
Association
Order of Railway Conductors and B
Railroad Yardmasters of America
Railway Employes' Department, A

Sheet Metal Workers' International Association
Switchmen's Union of North America
The Order of Railroad Telegraphers

This Court has heretofore recognized the As as a proper party to appear and speak for ganizations and their member employees. *Commerce Commission* v. *Railway Labor Ex Association,* 315 U.S. 373 (1942); *Railwa Executives' Association* v. *United States,* 142 (1950); *American Trucking Associatio et al.* v. *United States,* 355 U.S. 141 (1957). the foregoing organizations, but not all, are appellants in this case.[2]

II

The questions presented by the appeal in are of vital importance to the Railway Labo tives' Association and the individual organiz which it is composed. Included in the thou collective bargaining agreements which thes zations maintain with rail carriers governing of pay, rules, and working conditions of t ployees are more than 1000 union shop ag the validity of which is challenged by the below. The nine organizations listed above, affiliated with the Association, and which are

[2] The nine organizations which are not parties to t clude the American Railway Supervisors' Associatio hood of Locomotive Engineers, Brotherhood of Locon men and Enginemen, Brotherhood of Railroad Trainm hood of Sleeping Car Porters, Hotel and Restaurant and Bartenders International Union, Order of Ra ductors and Brakemen, Railway Employes' Departm CIO, and Switchmen's Union of North America.

ties-appellants in this case, alone have
union shop agreements covering many
employees on railroads all over the coun
ity of which are challenged by the decis
which will be affected by the decision o
The interest of the Association in the va
union shop agreements is shown by th
filed a brief *amicus curiae* in *Railway*
partment, A.F.L. v. *Hanson,* 351 U.S. 22
close relationship of the Association t
further demonstrated by the fact that
took the depositions of officers of the
the proceedings below concerning the ac
Association and its relationship to the
lants (R. 108-115) and paragraphs 25
the Stipulation of Facts (R. 179-181)
Association, its organization, its officers,
and the financing of those activities.
clearly appear to entitle the Associatio
this case for itself and the organizatio
affiliated with it.

III

This interest of all railway labor or
the decision below, including the substa
of organizations with more than 250 unio
ments, which are not parties-appellan
fully represented by appellants alone
must direct their arguments toward
raised by the notice of appeal, not all o
to the industry as a whole. The Associa
centrate its presentation to the broad is
all of its affiliated organizations. More
pellants are not in the same position a
ciation to speak for the whole of railro

respect to the important problems before t
on this appeal.

Finally, the reliance in part by the appel
the facts concerning the Association, its offi
its activities as set forth in paragraphs 25 th
of the Stipulation of Facts (R. 179-181) giv
an interest of the Association in the litigati
can be most adequately and directly repres
the Association itself.

WHEREFORE, the Association moves the C
leave to file the brief annexed hereto on the
the questions raised by the appeal.

Respectfully submitted,

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Counsel for Railway L
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February, 1960

IN THE

Supreme Court of the United S

OCTOBER TERM, 1959

No. 258

INTERNATIONAL ASSOCIATION OF MACHINIST
Ap

v.

S. B. STREET, ET AL.,
A

On Appeal from the Supreme Court of Ge

BRIEF OF RAILWAY LABOR EXECU ASSOCIATION AS AMICUS CURI

The Railway Labor Executives' Associati this brief as *amicus curiae* in support of of the International Association of Machin that this Court reverse a final judgment preme Court of Georgia (R. 270), affirmin and decree of the Superior Court of Bi Georgia, (R. 105) enjoining the enforceme

shop agreements between the appellant railway labor organizations and nine named railroads.

THE INTEREST OF THE ASSOCIATION

The interest of the Association in this case is set forth in the annexed motion of the Association for leave to file this brief and need not be repeated here.

QUESTIONS PRESENTED

The notice of appeal (R. 273) in this case raises eleven questions. The Association in this brief will concern itself only with two of those questions as three issues falling within the ambit of those questions which are of primary concern to the Association. These are:

1. Is there any governmental action involved in this case on which constitutional issues may properly be based?

2. Did the Supreme Court of Georgia err in holding that the decision of this Court in *Railway Employes' Dept., A.F.L.* v. *Hanson*, 351 U.S. 225, is inapplicable where it is found that a union having a union shop agreement spends part of its funds for political and legislative purposes?

3. Did the Supreme Court of Georgia err in holding that union shop agreements entered into pursuant to the Railway Labor Act violate constitutional rights of individual appellees on the ground that a part of the periodic dues, initiation fees, and assessments paid by such individuals to appellant organizations are lawfully used to support political and legislative programs in the best interests of such organizations?

SUMMARY OF ARGUMENT

I. There is no governmental action giving rise to Federal constitutional issues in this case. This Court in the *Hanson* case held that there was governmental action upon which to base Federal constitutional issues in a situation where union shop agreements were made valid contrary to provisions of state law by Section 2, Eleventh of the Railway Labor Act. The Court found that in such a situation the Federal statute was the source of the power and authority by which any private rights were lost or sacrificed. There are no comparable provisions of state law here involved invalidating railroad union shop agreements. Although the petition in this case alleged that the union shop agreements violated certain provisions of Georgia law, and the Georgia courts found that the union shop agreements here involved were contrary to the law and public policy of the state, there does not appear to be any foundation for such a conclusion. The findings of the Georgia courts were expressed in general terms without reference to any specific provision of Georgia law. Moreover, an examination of Georgia law reveals that the provisions of Georgia "right to work" statutes specifically exempt the railroad industry. Therefore, it does not appear, as it did in the *Hanson* case, that the Railway Labor Act can be said to be the source of the power and authority by which it can be asserted that private rights are lost or sacrificed. Nor can it be argued that there is governmental action involved because the Railway Labor Act prevents the State of Georgia from enacting laws which would outlaw union shop agreements in the railroad field. The existing exemptions contained in the Georgia statutes relating to the railroad industry

were adopted in 1947, almost four years prior to t
adoption of the union shop amendment of the Ra
way Labor Act, and must be taken as the settled la
of Georgia.

2. Assuming *arguendo* that there is governme
tal action involved in this case so as to gi
rise to constitution issues, it is submitted th
those issues were resolved by this Court in t
Hanson decision. The Georgia trial court ori
inally interpreted the *Hanson* decision as disposing
the claims of the individual plaintiffs-appellees a
dismissed the petition. That judgment was reversed
the Georgia Supreme Court which held that the *Hu*
son decision is inapplicable to a situation where it
found that a union having a union shop agreeme
expends a part of its funds for political and legisl
tive purposes. However, it is submitted that a rea
ing of the *Hanson* case shows that the only situati
left open for re-examination is one where condition
of membership other than the payment of initiati
fees, periodic dues, and assessments are imposed
the exaction of such initiation fees, dues, or asses
ments is used as a cover for forcing ideological co
formity. Such a situation is clearly not involv
where, as in this case, the union shop agreements sp
cifically provide that the membership of employe
subject thereto shall not be denied or terminated f
any reason other than the failure of employees to te
der the initiation fees, periodic dues, and assessmen
uniformly required as a condition of acquiring or r
taining membership in the union and where nothi
more is involved than the expenditure of union fun
for political and legislative purposes. The mere e
penditure of funds for a purpose with which the i

dividual member may not agree does not impose any condition of membership upon him other than the payment of initiation fees, periodic dues, or assessments, nor does it in any way force ideological conformity by requiring him to agree with such purposes. The individual member is left free to oppose the legislative and political programs favored by the union if he so desires and neither his union membership nor his employment is affected. The North Carolina Supreme Court has considered the same problems that are raised in this case and found that they were disposed of by the *Hanson* decision.

3. Assuming *arguendo* that the issues before the Georgia court in this case were left open by the *Hanson* decision, it is further submitted that there is in fact no violation of Federal constitutional rights involved. The decision of the Georgia court is based upon the erroneous assumption that the use of union funds to support political or legislative programs with which a member may not agree is the equivalent of requiring the member to conform to the views of the union on such programs. These contentions have been considered and rejected by the Supreme Courts of California and North Carolina. The courts of New York and Indiana have also held that union shop agreements do not give rise to any violations of personal liberty or of the Fourteenth Amendment. The Georgia court stands alone in its conclusions, which are an integral part of its views, expressed in the decisions below, that this Court erred in the *Hanson* decision.

ARGUMENT

I

NO GOVERNMENTAL ACTION GIVING RISE TO CONSTI PROBLEMS IS HERE INVOLVED

The Supreme Court of Georgia stated the tional issue it was deciding as follows (R. 26

> "The fundamental constitutional que Does the contract between the employe plaintiffs and the union defendants, wh pels these plaintiffs, if they continue for the employers, to join the unions of spective crafts, and pay dues, fees, an ments to the unions, where a part of t will be used to support political and econ grams and candidates for public office, w plaintiffs not only do not approve but violate their rights of freedom of speech prive them of their property without du of law under the First and Fifth Amend the Federal Constitution?"

The court answered this question in the aff (R. 266-269)

It is clear that a question of infringement vidual Federal constitutional rights does not of the execution and enforcement of a con tween private parties because it is fundame the prohibitions of the United States Constit ply only to governmental action. *Corrigan ley*, 271 U.S. 323 (1926); *Civil Rights Cases*, 3, 11; *Slaughterhouse Cases*, 16 Wall. 36; *States* v. *Cruikshank*, 92 U.S. 542; *United Harris*, 106 U.S. 629, 639; *Hodges* v. *Unite* 203 U.S. 1, 18. The Georgia court therefo when it held that the union shop agreements

appellants and appellee railroads violated Federal con
stitutional rights of the individual appellees.

Nor is this conclusion affected by the findings
this Court in *Railway Employes' Dept., A.F.L.*
Hanson, 351 U.S. 225 (1956) on this subject. At pag
232 of its opinion in the *Hanson* case this Court con
sidered the question of whether any governmental a
tion was involved in the execution and enforcemen
of union shop agreements in the railroad industry
as to give rise to constitutional questions. It held tha
such governmental action was involved in the ca
before it because the union shop agreements there in
volved would have been invalid under Nebraska la
but for the provisions of Section 2, Eleventh of th
Railway Labor Act. (45 U.S.C.A. 152, Eleventh) Thu
the Court concluded the cited provision of the Rai
way Labor Act was the source of the power and au
thority by which any private rights might be lost
sacrificed.

The plaintiffs-appellees attempted to bring them
selves within the scope of this finding by alleging tha
the union shop agreements involved violated Chapte
54, Sections 804, 902, *et seq.* of the Georgia Code A
notated (R. 9, 10), as well as Chapter 2, Section 1
of that code, which appears in the Constitution
Georgia (R. 11). It is also alleged that the agre
ments violate Article 1, para. 3 of the Georgia Co
stitution (R. 12).

The trial court found, *inter alia*, that said union sh
agreements are contrary to "the law and public poli
of this State." (R. 104.) However, no specific prov
sion of Georgia law was cited nor was any mentio
made of the provisions of Georgia law alleged in t

petition as a basis for constitutional issues. preme Court of Georgia quoted paragraph trial court's conclusions of law (R. 264, 2 it did not cite any provision of state law ing the agreements in question. Significan court did not even rest the presence of const issues on any such Georgia law, but simply broad ground that the Railway Labor Act or allows defendants to make contracts in vio the constitutional rights of the plaintiffs."

An examination of the provisions of Geo set forth in the petition clearly shows the rea these omissions from the decisions below be reveals that nothing in Georgia law prohib agreements here involved.

The petition alleged that the union shop ag violated Chapter 2, Section 102 of the Code of which is Article 1, paragraph 2 of the Constit Georgia which reads as follows:

> "Protection to person and property is t mount duty of government, and shall be i and complete."

This provision appears in the "Bill of Ri the Georgia Constitution and does not appear any applicability to the question of the validit union shop agreements. Moreover, a relian such a provision, also embodied in an equival eral "Bill of Rights," to prohibit railroad un agreements in Georgia and thus create a co tween Georgia law and the Federal law so as rise to Federal constitutional issues involves lar process of reasoning.

The same may be said for Article 1, paragraph 3 of the Georgia Constitution cited by the petition (R. 12) which reads as follows:

> "No person shall be deprived of life, liberty, or property except by due process of law."

The inapplicability of these provisions is clearly indicated by the fact that the Georgia statutes specifically exempt railway labor union shop agreements from the scope of the state's "right to work" laws found in Chapter 54, Sections 804, 902, *et seq.* of the Georgia Code and cited in the petition (R. 9).

Section 804 of Chapter 54 prohibits any person from compelling or attempting to compel another to join a "labor organization."

Section 902 makes it unlawful for individuals, as a condition of employment or continued employment to be required to become or remain a member of a "labor organization." Likewise, Section 905 makes it unlawful for an "employer" to contract with any "labor organization" to make employment or continued employment conditional on membership in a "labor organization" on the payment of any fee, assessment or money to such an organization.

If these provisions were applicable to railroads subject to the Railway Labor Act or to railway labor organizations also subject to that statute, then the findings of this Court in the *Hanson* case respecting the presence of governmental action would be applicable here.

However, Section 901(a) of Chapter 54 of the Georgia Code defines the term "employer", as used in Chapter 54, as follows:

"The term 'employer' includes any perso
in the interest of an employer, directly
rectly, *but shall not include* the United S
any State, or any political subdivision
or *any person subject to the Railway La*
as amended from time to time * * *" (E
supplied)

Section 901(d) defines the term "labor o
tion," as used in Chapter 54, to mean any
tion which exists to deal in whole or in part w
ployers" concerning grievances, labor dispute
rates of pay, hours of employment, or cond
work.

Thus the railroad appellees, which as emp
the individual appellees entered into the un
agreements here involved, were not prohi
Chapter 54 of the Georgia Code from execut
contracts. Similarly, Section 902 of Chapter
not operate against such agreements becaus
lants clearly were not "labor organizations" a
by Section 901(d), *i.e.*, organizations deal
"employers" covered by the statute.

It would, therefore, clearly appear that th
of the petition to create a conflict between
law and Section 2, Eleventh of the Railwa
Act are entirely "make weight" and that th
tutional violations found by the Georgia c
upon violations of claimed constitutional r
private contracts not requiring the overrid
visions of Section 2, Eleventh of the Railwa
Act to give them force and effect in Georgia.

The only effect of the Railway Labor Ac
situation is to withdraw the previously exis
hibitions of Federal law against such agreeme

it is submitted does not constitute "governme
getion" within the intent of the *Hanson* decisio

Chapter 54 was enacted in 1947, nearly four y
prior to the adoption of Section 2, Eleventh of
Railway Labor Act, and must be taken as the se
law of Georgia, as declared by its legislature; on
subject.

II

THE DECISION OF THE GEORGIA SUPREME COURT IS CONTRA THE DECISION OF THIS COURT IN THE HANSON CASE

Assuming *arguendo*, that there is governmenta
tion involved in this case so as to give rise to
stitutional issues, it is submitted that those issues
resolved by this Court's decision in *Railway Empl
Dept., A.F.L.* v. *Hanson*, 351 U.S. 225 (1956).

The trial court originally dismissed the petitio
this case upon the precedent of the *Hanson* deci

This judgment of dismissal was reversed by
Georgia Supreme Court on the ground that the
tion raised issues left open by the *Hanson* deci
Looper v. *Georgia, Southern & Florida Railway C
pany, et al.*, 213 Ga. 279, 99 S.E.2d 101 (1957).
court's holding on this point read as follows (99 S.
at 104):

> "We go now to the single point raised whic
> Supreme Court has, we believe, clearly indic
> is still open for decision. The petition of t
> non-union employees alleges that they have
> notified in accordance with the law and the
> tract of employment that unless they bec
> members of a union within 60 days their emp
> ment will be terminated. It is alleged that
> union dues and other payments they will be
> quired to make to the union will be used to

port ideological and political doctr
didates' which they are unwilling t
in which they do not believe, and
violate the First, Fifth and Ninth
of the Constitution. While Railwa
v. Hanson, 351 U.S. 225, 38 LRRM
upheld the validity of a closed shop
cuted under § 2, Eleventh, that opin
dicates that that court would not
quirement that one join the union if
tions thereto were used as this pe
It is there said, 'Judgment is *res*
ours] as to the validity or enforc
union or closed shop agreement if ot
of union membership be imposed o
tion of dues, initiation fees or assess
as a cover for enforcing ideologic
or other action in contravention of
the Fifth Amendments.'

"We must render judgment now
cise question. We do not believe one
tionally be compelled to contribute
port ideas, politics and candidates
poses. We believe his right to in
such exactions is superior to any cl
can make upon him."

The court therefore held that the trial
dismissing the amended petition.

However, it is submitted that the mere
funds derived from payments of member
poses indicated, which are not illegal a
cordance with the union's determinati
best interests of the organization and
does not give rise to the situation as
Court reserved its judgment in the *Han*
though all members of the organizatio
accord with the expenditures.

The mere expenditure of funds for a purpo
which the individual member may disagree ob
does not impose any condition of membershi
than the payment of initiation fees, periodic
assessments. Nor does it in any way force ide
conformity. The individual member is not r
by the union shop agreements here involved
port, as a condition of employment, any pa
political ideas or candidates. Section 4 of th
ments specifically provides, in accordance with
visions of Section 2, Eleventh of the Railway
Act, that the employment of an employee su
the agreements shall not be terminated for any
other than his failure to tender the initiati
periodic dues, and assessments uniformly requi
condition of acquiring or retaining membershi
provision of the agreements reads as follows
208):

> "Nothing in this agreement shall req
> employe to become or to remain a membe
> organization if such membership is not a
> to such employe upon the same terms and
> tions as are generally applicable to any oth
> ber, or if the membership of such emp
> denied or terminated for any reason oth
> the failure of the employe to tender the
> dues, initiation fees, and assessments (not
> ing fines and penalties) uniformly requir
> condition of acquiring or retaining mem
> For purposes of this agreement, dues, fe
> assessments, shall be deemed to be 'unifor
> quired' if they are required of all emplo
> the same status at the same time in the s
> ganizational unit."

Thus the active or passive support of any
idea or candidate by an employee subject to th

shop agreements will not and can not
ployment. That being the case, the agr
are not "a cover for forcing ideological
other action in contravention of the
ment" the possibility of which concer
in the *Hanson* case.

This view of the scope of the *Hans*
adopted by the North Carolina Sup
Allen, et al. v. *Southern Railway Com*
N.C. 491, 107 S.E.2d 125.[3] In that c
union shop agreements were subjected t
lenge of invalidity as is here advanc
vidual appellees. In holding that the
required rejection of such claims, the
Supreme Court stated (107 S.E.2d at

> "As we interpret Hanson, the
> of the United States has decided
> ment that plaintiffs pay the ordinar
> and initiation fees uniformly requi
> bers does not violate either the Fi
> Amendment. Since the constitut
> Union Shop Amendment has bee
> held, we need not discuss plainti
> tack there predicated on the Nin
>
> "All that defendant Unions de
> tiffs is that they pay the ordinary
> and initiation fees uniformly requi
> bers. *In all other respects, plaint*
> *speak and to act according to th*
> *even if by so doing they speak a*
> *purposes with defendant Unions.*
>
> "As we interpret it, the questio
> Hanson would arise only if and v

[3] This decision is presently under reconsidera
Carolina court.

not affect his em-
agreements clearly
gical conformity or
the First Amend-
ncerned this Court

anson decision was
Supreme Court in
ompany, et al., 249
at case these same
ed to the same chal-
anced by the indi-
he *Hanson* decision
he North Carolina
at 134):

he Supreme Court
ded that a require-
inary periodic dues
quired of all mem-
First or the Fifth
tutionality of the
been expressly up-
ntiffs' general at-
Ninth Amendment.

demand of plain-
nary periodic dues
quired of all mem-
intiffs are free to
their own desires
and act at cross-
s.

stions reserved in
d when defendant

deration by the North

Unions should undertake to deny membe
to terminate membership on account of s
ure of plaintiffs to comply with the vari
lations applicable to voluntary members
fusal to sign application blanks, failure
meetings, failure to speak or act in harm
the policies and objectives of defendant
failure to pay an exaction imposed by wa
alty or for disciplinary purposes, etc. I
ant Unions, notwithstanding the tender
tiffs of ordinary periodic dues and initia
refuse to recognize plaintiffs as members
to them any privilege to which a memb
titled, it would seem that by such cond
would relieve plaintiffs from further ob
under the union shop agreement. It is c
sible that occasions will arise where c
Unions will prefer to forego the collecti
riodic dues and initiation fees rather t
nonconformists as members of their
tions." (Emphasis supplied)

The North Carolina court also observed th
not contended that the union expenditures
violated the Federal Corrupt Practices
U.S.C.A. 610) or that such expenditures di
cord with the wishes of the majority of
Similarly no such claims are advanced in thi

It is submitted that the analysis and inter
of the *Hanson* decision made by the North
Supreme Court in the *Allen* case is clearly c

III

THE USE OF UNION FUNDS TO SUPPORT POLITICAL AND ECONOMIC PROGRAMS OR CANDIDATES OPPOSED BY INDIVIDUAL APPELLEES DOES NOT VIOLATE ANY FEDERAL CONSTITUTIONAL RIGHT OF SUCH PERSONS

Assuming *arguendo* that the issues before the Georgia courts in this case were left open by the *Hanson* decision, it is further submitted that there is in fact no violation of Federal constitutional rights involved.

The crux of the decision of the Georgia Supreme Court is that the union shop agreements here involved violate the rights of freedom of speech of the individual appellees under the First Amendment to the United States Constitution and deprives them of their property without due process of law under the Fifth Amendment because a part of the money paid by such individuals to the appellant organizations pursuant to such agreements is used to support political and economic programs and candidates which the plaintiffs-appellees not only do not approve but oppose (R. 266-270).

The court's conclusion that First Amendment rights of the individual appellees are violated is based on the following grounds (R. 269):

> "One who is compelled to contribute the fruits of his labor to support or promote political or economic programs or support candidates for public office is just as much deprived of his freedom of speech as if he were compelled to give his vocal support to doctrines he opposes. Abraham Lincoln asserted a similar view when he said: 'I believe each individual is naturally entitled to the fruits of his labor, so far as it in no wise interferes with any other man's right.' There is a

> common saying, that 'Money talks—sometimes louder than the spoken word.' In the case at bar, the personal convictions of the plaintiffs on political and economic issues are being combatted by the use of their financial contributions to foster programs and ideologies which they oppose."

The court's conclusion that Fifth Amendment rights of the individual appellees are violated is based on the following grounds (R. 269):

> "If the requirement by the employer of his employee, as a condition of his employment, that he agree not to join a union, subjecting himself to be discharged if he did (now forbidden by the Railway Labor Act, 45 U.S.C.A. § 152, and the National Labor Relations Act, 29 U.S.C.A. § 157), is obnoxious to the employee's economic freedom to contract, then the requirement by the employer, based upon an act of the Federal Congress, that one in his employ as a condition of continued employment, would be compelled to join a union and pay dues, fees, and assessments which will be used in part for the support of ideologies he opposes, is likewise violative of his freedom to contract under the Fifth Amendment."

The fallacy underlying the court's conclusions with respect to the First Amendment is its assumption that use of union funds which are in part derived from payments made by the individual appellees to appellant organizations somehow deprives such individuals of their own views and the freedom to express such views.

It has long been recognized by this Court that the expenditure of moneys from the Federal treasury does not involve any injury to individual taxpayers which would furnish a basis for an appeal to the pre-

ventive powers of a court of equity. *Alabama Powe Company* v. *Ickes*, 302 U.S. 464 (1938). Also s *Massachusetts* v. *Mellon*, 262 U.S. 447 (1923). Simi arly it is clear that the expenditure of union funds, small part of which may have been contributed by i dividuals who disagree with the purposes of the e penditures, does not inflict any injury upon such ind viduals nor can it even be said, as the California Su preme Court has pointed out (see *infra*, p. 27) tha such expenditures involve the use of any one ind vidual's money.

"The Georgia court's conclusion is obviously at wa with the facts of the situation and is an integral pa of that court's views, candidly expressed in *Looper Georgia Southern & Florida Railway Company*, 21 Ga. 279, 99 S.E.2d 101 (1957), to the effect that th Court's decision in the *Hanson* case itself violates th principles of freedom of speech by denying the "rig to work." In speaking of the *Hanson* decision in th *Looper* decision, the Georgia court stated (99 S.E.2 at 104):

> "It strikes us as being a futile gesture t solemnly declare the sacred and indestructible co stitutional right of one to freedom of speech an freedom of worship, and then sanction a denial that same one's right to work which is the indis pensable economic support without which neithe freedom could endure. One could not for lon enjoy speaking and worshiping freely if he wa hungry and was denied bread or the means obtaining it.
>
> * * * *
>
> "We believe that a single person armed wit right—*the right to work*, should in all courts justice be able to defeat the selfish demands multitudes though they be members of a lab

union who seek to deprive him of that right. We would so rule in any case where we are allowed jurisdiction."

The contentions relied upon by the Georgia court were subjected to a searching analysis by the California Supreme Court in *DeMille* v. *American Federation of Radio Artists,* (Cal. Sup. Ct.) 187 P.2d 769 (1947) and were rejected by that court as based on erroneous assumptions. In that case the plaintiff, a well-known producer, was a member of the American Federation of Radio Artists and his employment by the Columbia broadcasting network as a producer of radio programs was subject to a union shop agreement. The union assessed each of its members $1.00 for the purpose of setting up a fund to be used by the California State Federation of Labor to help bring about the defeat of a proposed "right to work" amendment to the California Constitution, outlawing union shop agreements, known as Proposition No. 12. Plaintiff refused to pay the assessment and was suspended from membership in the union. He then sought injunctive relief against the union. In support of this prayer for relief he contended, *inter alia*, that the levy of the assessment and his suspension for refusal to pay it infringed his constitutional right of suffrage, freedom of speech, press and assembly. The California Supreme Court described the plaintiff's contentions as follows (187 P.2d at 775):

"The plaintiff next contends that the levy of the assessment and the consequent suspension upon his refusal to meet it, infringed his constitutional right of suffrage, freedom of speech, press and assembly. He does not contend that he was prevented from voting as he pleased at the polls, or from exercising his free choice on the ballot;

nor that he was prevented from expressi
licly and privately his personal views in
of Proposition No. 12; nor does he conte
the union engaged in any political activity
coercion upon him personally to vote in a
ticular way or to express himself individu
opposing Proposition No. 12. Admitte
defendants did not prescribe what should
members' individual beliefs nor declare t
or expressions of individual members fa
to Proposition No. 12 would constitute
for charges of disloyalty. The plaintiff
that nevertheless the compulsion by assess
$1.00 on each member to provide a fun
used by the union to oppose Proposition No
a violation of each and all of his stated in
rights.

"The ground of the plaintiff's assertion
his payment of the assessment would be
pression on his part contrary to his pers
liefs. He says: 'To compel appellant to
hand in his pocket and to give money to
leaders to be used to oppose Proposition
to be voted on at the election of November
when he was unwilling to oppose it and w
pellant's sentiments were in favor of Pro
No. 12, compelled appellant to give expre
sentiments and to act contrary to his sen
and to his thoughts, and * * * to his opinio
The giving of the money in opposition to
lant's sentiments was more eloquent than
of actual words.' "

The California court rejected in the follow
guage the plaintiff DeMille's assumptions, wh
also inherent in the Georgia court's conclusio
involved, that compulsory contribution to the
be used to defeat Proposition No. 12 amount
compulsory endorsement by him of such op

and a use of his money for such purpose (187 P.2d at 776):

"The member and the association are distinct The union represents the common or group in terests of its members, as distinguished from thei personal or private interest. 'Structurally and functionally, a labor union is an institution which involves more than the private or personal in terests of its members. It represents organized institutional activity as contrasted with wholly individual activity. This difference is as well defined as that existing between individual mem bers of the union.' (United States v. White, 32 U.S. 694, at page 701. Dues and assessments paid by members to an association become the property of the association and any severable or individual interest therein ceases upon such payment. (Law son v. Hewell, supra, 138 Cal. 613, 622; Rhode v United States, 34 App. Cases, Dist. of Col. p. 249 Lamm v. Stoen, 226 Ia. 622, 284 N.W. 465; Car penters Union v. Backman, 160 Ore. 520, 86 P.2d 456; Textile Workers Union v. Barrett, 19 R.I 663; South Shore Country Club v. The People, 22 Ill. 75, 81 N.E. 805; Franklin v. Burnham, 40 Misc Rep. 566, 82 N.Y. Supp. 882.) As such property they are subject to disbursement and expenditure by the association in pursuit of the lawful object o objects for which they were designated to b expended.

"It has been seen that union opposition to th adoption of Proposition No. 12 was an objec within the sphere of the organic law of the Fed eration and its Local. Indeed, the plaintiff doe not contend that the union may not thus speak What he contends is that the union may not us his money for that purpose.

"The Local's declaration to pursue the objec tive and to authorize the raising of a fund fo the purpose was expressed by the membershi

through democratic procedures. It is th
safe to assume that the Local's action wa
cordance with the opinion of the majority
members of the Local. *In no wise may it*
that it necessarily represented the opi
every individual member thereof, and conse
that of the plaintiff." (Emphasis supplie

The court went on to point out that mere d
ment with the majority did not excuse plainti
paying the assessment. It's statement on thi
read (187 P.2d at 776):

"Mere disagreement with the majority
absolve the dissenting minority from con
with action of the association taken thro
thorized union methods. And compliance
payment by the plaintiff of the assessment
not stamp his act as a personal endorse
the declared view of the majority. Major
necessarily prevails in all constitutional
ments including our federal, state, cou
municipal bodies, else payment of a tax le
a duly authorized and proper objective c
avoided by the mere assertion of beliefs an
ments opposed to the accomplishment
In a government based on democratic pr
the benefit as perceived by the majority p
And the individual citizen would raise but
cry of invasion of his constitutional rights
he seek to avoid his obligation because of a
ence in personal views. A member of a vo
association should not be permitted succ
to seek a similar avoidance."

The court then concluded, after analyzing th
relied upon by plaintiff, that plaintiff's assu
that the assessment amounted to compulsion up
to adopt the union view was without merit. T

cluding finding of the court read as follows (187 P.2d at 778):

> "In his reliance on the foregoing and other similarly distinguishable cases, the plaintiff has assumed that the union's action in levying an assessment for the purpose stated was some sort of compulsion upon him to adopt the union view of what was best for union interests, and that payment thereof would be an expression on his part of the union belief. As has been seen the assumption is not warranted by the facts."

The court also noted that the principles enunciated by it did not involve any novel development, but simply an application to labor unions of views that had always prevailed with respect to medical associations and bar associations. On this point the California court stated (187 P.2d at 776-777):

> "The plaintiff states that this is a case of first impression. But the principles involved and applicable to the facts are not new. Here novelty is present only in the assertion that the proper use of association funds may be avoided by a member who is committed to a minority view. Other organizations, such as Medical Associations, Bar Associations, and the like, have used their funds to support favorable legislation or defeat measures considered in the opinion of the majority or its duly authorized representatives to be inimical to the public interest or to its own welfare. It has never been considered that a difference of opinion within the association as to the use of association funds for such purposes, where otherwise lawful, was a matter for judicial interference."

The analogy drawn by the court to bar associations is the same as that drawn by this Court in the *Hanson* opinion (page 238) where it is stated:

"Wide-ranged problems are tendered
First Amendment. It is argued that
shop agreement forces men into ideol
political associations which violate thei
freedom of conscience, freedom of associ
freedom of thought protected by th
Rights. It is said that once a man
member of these unions he is subject t
ciplinary control and that by force of t
Act unions now can make him confor
ideology.

"On the present record, there is no
infringement or impairment of First A
rights than there would be in the case o
who by state law is required to be a
an integrated bar."

The decision of the Georgia Supreme C
cerning the application of the First Amen
union shop agreements is also contrary to the
in *Wicks* v. *Southern Pacific Company*, 121
454, *aff'd.* 231 F.2d 130 (9th Cir., 1956), *cer*
U.S. 946.[4]

The Georgia court's rationale as to why
Amendment rights of individual appellees ar
is equally erroneous on its face. The cou
substance that since the Railway Labor Ac
National Labor Relations Act prohibit so-ca
low dog" contracts, it follows that the aut
of union shop agreements in the circumsta
involved amounts to a violation of the fr
contract given to individual appellees by
Amendment. The conclusion is a comp

[4] The petition for certiorari in this case was denied
1956, a week after issuance of the *Hanson* decision.

sequitur from the premise. Moreover, the argument is simply a restatement of the "right to work" theory to which the Georgia court clearly stated it was dedicated in the *Looper* decision. *Supra,* pages 17-18. This argument was forcefully rejected by the Appellate Court of Indiana sitting *en banc* in *Smith v. General Motors Corp.*, 143 N.E.2d 441 (1957) with the following finding (143 N.E.2d at 449):

> "Appellant's constitutional argument proceeds upon the assumption that a worker may force his employment upon a particular employer, which is the situation where an employer has made a voluntary contract determining whom he will or will not employ. To force an employer to take any particular worker on the ground that he has a right to work at the particular job certainly smacks of totalitarianism."

Contentions that union shop agreements violated the Fifth Amendment were also rejected in *Wicks* v. *Southern Pacific Company,* 121 F. Supp. 454, *aff'd* 231 F.2d 130 (9th Cir. 1956), *cert. den.* 351 U.S. 946, and similar contentions respecting the Fourteenth Amendment were rejected by the New York Court of Appeals in *Williams* v. *Quill,* 277 N.Y. 1, 12 N.E. 2d 547 (1938).[5]

In addition, the War Labor Board during World War II rejected contentions that union shop agreements were contrary to basic public policy because they permit use of governmental authority to make possible political contributions. *In re Carnegie-Illinois Steel Corp. et al. and United Steelworkers of*

---

[5] An appeal to this Court was dismissed for want of a final judgment. *Williams* v. *Quill*, 303 U. S. 621 (1938).

America, 15 LRRM 1596 (1944).[6] On t
Board stated (15 LRRM at 1598):

> "Unions in basic steel industry a
> continuation of maintenance-of-me
> union-shop provisions contained in
> tracts between parties, despite conte
> others, that unauthorized work st
> taken place and that political activi
> by parent body makes such provisio
> public policy because it permits u
> mental authority to make possible
> tributions, since general record of u
> one of responsibility and cooperatio
> into internal affairs of union, as
> company, is not warranted by Boar

There is a suggestion in the opinion o
Supreme Court that the union shop a
volved are invalid in this case because o
the plaintiffs are not seeking employm
railroad contractors but are already
269). The decree of the trial court
forcement of the agreements (R. 105)
tain any such distinction. Moreover, s
tion is wholly without merit. In *McMull*
Oklahoma and Gulf Railway Co., 229 F
Cir., 1956), *cert. den.* 351 U.S. 918, an att
upon an agreement negotiated by a rail
hood containing a provision for comp
ment of railroad engineers at the age
plaintiffs were engineers who were alre
age of 70. It was contended by them th
cumstances the agreement was invalid b
tice had been given to them and it depr
property rights in violation of the Fifth

[6] Reference is to Labor Relations Reference M

to the Federal Constitution. The Tenth Circuit r
jected this argument with the following finding (2
F.2d at 56):

> "These contentions are without merit. It is co
> ceded that the B.L.F.&E. was the duly select
> and certified bargaining agent for the craft i
> cluding these plaintiffs, with authority to contra
> with the railroad on matters relating to rates
> pay, rules and working conditions. The Railw
> Labor Act requires railroads to 'treat with' cer
> fied representatives of the employees and wi
> no others. 45 U.S.C.A. § 152, Ninth; Virginian
> Co. v. System Fed. No. 40, 300 U.S. 515, 545, 5
> 57 S.Ct. 592, 81 L.Ed. 789; Lewellyn v. Flemi
> supra. In the Lewellyn case [154 F.2d 213],
> was stated that the Act 'undoubtedly included t
> authority to prospectively contract with refe
> ence to seniority rights of the members of t
> craft, whether members of the union or not'. T
> compulsory retirement provisions of the contra
> with which we are dealing are prospective, a
> are not retroactive in any respect. They do n
> affect rights already accrued. They seek to chan
> existing terms of the contract and to apply the
> changes in the future. This, the bargaining age
> has the power to do. Elgin, J. & E. Ry. Co.
> Burley, 325 U.S. 711, 739, 65 S.Ct. 1282, 89 L.E
> 1886. The contractual provisions were for t
> collective interests of all the employees repr
> sented, even though some were adversely affecte
> Since the Railway Labor Act does not create
> permanent status for employees or fix unlimit
> tenure in their jobs, there was no violation of t
> plaintiffs' Constitutional rights."

To the same effect is the decision of the Supreme Cou
of Missouri in *Cook* v. *Brotherhood of Sleeping C*
Porters, 309 S.W.2d 579, 587 (1958) involving uni
shop agreements.

The Georgia court stands alone
it has reached.

CONCLUSION

Upon the basis of the foregoing
ties, it is respectfully submitted th
the Georgia Supreme Court shoul

Respectfully submit

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February, 1960

MOTION FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE AND BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATION AS AMICUS CURIAE

NO. 286 4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL., *Appellants*,

v.

S. B. STREET, ET AL.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA

MOTION FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE AND BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

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Citations

CONSTITUTITION OF THE UNITED STATES:

FEDERAL STATUTES:

IN THE

Supreme Court of the United State

OCTOBER TERM, 1959

NO. 258

INTERNATIONAL ASSOCIATION OF MACHINIS
ET AL., *Appellants,*

v.

S. B. STREET, ET AL.

ON APPEAL FROM THE SUPREME COURT OF THE
STATE OF GEORGIA

MOTION FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE

The American Federation of Labor and Congress
Industrial Organizations (AFL-CIO) hereby respectf
moves for leave to file a brief *amicus curiae* in this cas
support of appellants, as provided in Rule 42 of the R
of this Court. The consent of the attorneys for the ap
lants has been obtained. The consent of the attorneys
the appellees was requested but refused.

The AFL-CIO is primarily a federation of national
international labor unions, including all of the appel
unions. Total membership of the unions affiliated with
AFL-CIO is approximately thirteen million. Technic
appellees here are challenging the validity of union s
contracts executed by appellants pursuant to sectio
Eleventh of the Railway Labor Act, as amended by
Act of January 10, 1951, 64 Stat. 1238, 45 U.S.C. §

Eleventh. Realistically, appellees are challe
of labor organizations, such as the AFL-CI
ates, to enter into union shop contracts witho
one of the most effective means available for
best interests of their membership: political
action.

Appellants will discuss in detail the tech
supporting the lawfulness of such union act
present motion is granted, the AFL-CIO p
before the Court an outline of historical and
establishing that political activity has traditi
integral and vitally essential feature of the
gram for improving their lot through organiz
own treatment of the legal issues will be conf
summary, intended only to place the histo
nomic data in their proper context. We feel t
material we present will assist the Court i
the leading role of union political action in
American labor, and in assaying the sound
ments that political action continues to be a
necessary element of any truly effective pr
economic betterment of the worker.

Respectfully submitted,

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February 1960

IN THE

Supreme Court of the United Stat

OCTOBER TERM, 1959

NO. 258

INTERNATIONAL ASSOCIATION OF MACHINI
ET AL., *Appellants,*

v.

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ON APPEAL FROM THE SUPREME COURT OF GEO

BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

INTEREST OF THE AFL-CIO

This brief *amicus curiae* is filed by the American Fe
tion of Labor and Congress of Industrial Organiza
(AFL-CIO), contingent upon the Court's grantin
Motion for Leave to File a Brief as Amicus Curiae.

Appellants herein are relying upon the validity u
tion 2, Eleventh of the Railway Labor Act, as amend
the Act of January 10, 1951, 64 Stat. 1238, 45 U.S.C.
Eleventh, and upon the validity of union shop agree
executed pursuant thereto. Appellants are affiliated
the AFL-CIO. Numerous other labor organizations
ated with the AFL-CIO, as well as appellants, wou
critically affected by an adverse decision in this case,
they are operating under thousands of similar union
agreements executed pursuant to the proviso contai

section 8(a)(3) of the National Labor R
adverse decision might, in effect, compe
either to give up the union shop, or to ab
tional and essential activities in the politi
fields. The AFL-CIO, whose affiliated
approximately thirteen million American
the most direct and compelling kind of i
come of the present litigation.

ARGUMENT

The court below held, inter alia, that
funds for the promotion of political prog
the appellees, where such funds are coll
union shop agreements permitted under s
of the Railway Labor Act, violates appel
the First and Fifth Amendments to the C
United States (R. 249-250). This brief w
these startling constitutional proposition

---

[1] Two other teasing questions merit a brief v
(1) As we read the opinion of the court belo
on an interpretation of the Federal Constitutio
Georgia law was not discussed by the Geor
Indeed, union shop or closed shop contracts
valid under the state's common law. See *Sava*
Telegraph Co., 198 Ga. 728, 735-736, 32 S.E. 2
v. *Hearst Consolidated Publications*, 190 Ga.
(1940). And the state's "right-to-work" law,
pressly excludes the interstate railroad industr
Georgia Code § 54-901(a) (1958 Supp.). Th
whether a federal constitutional question was
sented in this case below. For it would appea
where there would be a right of action against t
statute or common law, but for the interven
Labor Act, does the question of the constitution
provision like section 2, Eleventh arise in the f
in *Otten* v. *Baltimore & O. R. Co.*, 205 F. 2d
see 65 Yale L. J. 724, 729-730 (1956). But in i
the constitutional issue, the court below appa

Appellees' contentions have already been rejected
Court in *Railway Employes' Department* v. *Hanso*
U.S. 225. The Court was there apprised that union
collected pursuant to union shop agreements were
used for political purposes. The validity of such unio
agreements was nonetheless upheld.

We submit that constitutional rights are not at
since no governmental action is involved in a union'
tiation of a union shop contract or in its use of its fu
promote workers' economic interests through appr
political and legislative activities.

But even if there is here sufficient governmental
to invoke the application of constitutional limitatio
submit that no constitutional rights are violated:
political expenditures in no way impair minority me
First Amendment freedoms of speech or of asso
Furthermore, they meet the Fifth Amendment r
ments of due process, since, in light of the special pu
and problems of labor unions, such expenditures a
"unreasonable, arbitrary or capricious," but ra
means having "a real and substantial relation to the
sought to be attained." *Nebbia* v. *New York*, 291 U.

---

the trial court's improvisation of a new state policy agains
shop contracts in the railroad industry (R. 265-266).

(2) The precise conclusion of the court below was that th
of union funds for certain political purposes violated ap
constitutional rights (R. 250). The validity of union sho
ments, as such, under section 2, Eleventh of the Railway La
has of course already been upheld by this court. *Railway Em
Department* v. *Hanson*, 351 U.S. 225. If appellees' consti
rights were imperiled by the *use* of funds collected purs
valid contracts, we submit that a state court could properl
cate those rights only by enjoining the unconstitutional *use*
monies, and not by enjoining the enforcement of a contra
under applicable preemptive federal law, as was done here
106). See 32 Tulane L. Rev. 508, 511-512 (1958).

525. In support of this latter point we will adduce, as the principal contribution intended by this brief, historical and economic data to establish that political activity is a traditional and indeed a vital element in workers' programs for improving their economic status through unionism.

I. This Court Has Upheld The Constitutionality Of Section 2, Eleventh In Permitting Union Shop Agreements Even Though Dues Collected Thereunder Are Used For Political Purposes Opposed By Some Employees.

In *Railway Employes' Dept.* v. *Hanson,* 351 U.S. 225, this Court upheld the constitutionality of section 2, Eleventh of the Railway Labor Act. In so doing it reversed the Nebraska Supreme Court's decision in *Hanson* v. *Union Pacific R. Co.*, 160 Neb. 669, 71 N.W. 2d 526 (1955). Nebraska had found violations of the First and Fifth Amendments in section 2, Eleventh and in the union shop agreements executed under its authorization. Among the reasons advanced were the following:

1. An employee's freedoms were infringed in that "some of these labor organizations advocate political ideas, support political candidates, and advance national economic concepts which may or may not be of an employee's choice." 160 Neb. at 697.

2. An employee was denied due process in that the means selected had no "real and substantial relation to the object sought to be obtained * * * because by requiring him to pay initiation fees, dues and assessments he is required to pay for many things besides the cost of collective bargaining," 160 Neb. at 699.

The Transcript of Record before this Court in *Hanson* clearly showed that union dues were used for political purposes. These included the political education of union members, endorsement and support of individual candidates for public office, and manifold lobbying activities. (See Record

in No. 451, October Term, 1955, pp. 103-104, 125, 136, 141-144, 151, 254-256.)

In the face of such evidence, this Court unanimously rejected the constitutional attacks upon the validity of section 2, Eleventh and the union shop agreement identical to the one here challenged. Whether to require "the beneficiaries of trade unionism to contribute to its costs" was deemed a policy question for the Congress, not a matter of due process. 351 U.S. at 235. Payment of the "periodic dues, initiation fees, and assessments" authorized by the statute was equated with financial support relating "to the work of the union in the realm of collective bargaining," and a "more precise allocation of union overhead" was not demanded.[2] *Ibid.*

Despite the manifest proof of union political activities, this Court concluded that on the record before it there was "no more an infringement or impairment of First Amendment rights than there would be in the case of a lawyer who by state law is required to be a member of an integrated bar." 351 U.S. at 238. The Court reserved judgment on the question which would be presented if the "exaction" of dues was "used as a cover for forcing ideological conformity or other action in contravention of the First Amendment." *Ibid.* It is this guarded language which the Supreme Court of Georgia has seized upon to justify the decision below. (R. 251). We submit there is nothing whatsoever in the present record to suggest that "ideological conformity" has been imposed on railroad employees, either through financial exactions, or internal discipline, or any other means.

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[2] That political activities indeed "relate to" and are "germane to" the union's work in the realm of collective bargaining will be confirmed by the historical and economic data contained in Part IV, *infra*, p. 14 ff.

In short, we are in full accord with the argument pre sented in much greater detail by appellants: the issues nov before this Court are substantially identical with thos before it in *Hanson*. The decision in *Hanson* should thu be dispositive of this case.[3]

II. No Governmental Action, And Hence No Constitutional Limi tations, Are Involved In A Union's Use Of Its Funds Fo Political Activities.

The lower federal courts have consistently held tha labor unions are private organizations and not govern mental in character. Therefore an individual generally may not invoke the protection of the Consfitution against them *Courant* v. *International Photographers*, 176 F.2d 100 (9th Cir. 1949), *cert. den.* 338 U.S. 943; *Williams* v. *Yellow Cab Co.*, 200 F.2d 302 (3d Cir. 1952), *cert. den.* 346 U.S 840; *Otten* v. *Baltimore & O. R. Co.*, 205 F.2d 58 (2d Cir 1953); *Wicks* v. *Southern Pacific Co.*, 121 F.Supp. 454 (S.D Cal. 1954), *aff'd.* 231 F.2d 130 (9th Cir. 1956), *cert. den.* 35 U.S. 946; *Oliphant* v. *Brotherhood of Locomotive Firemen and Enginemen*, 262 F.2d 359 (6th Cir. 1958), *cert. den.* 35 U.S. 935, *cert. den.* 359 U.S. 962.

This Court itself has remarked, in *American Communi cations Assn.* v. *Douds*, 339 U.S. 382, 402:

> "We do not suggest that labor unions which utilize th facilities of the National Labor Relations Board be come Government agencies or may be regulated a such."

We are fully aware that in several cases this Court ha held or has suggested that certain actions of private group

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[3] So held in *Allen* v. *Southern R. Co.*, 249 N. C. 491, 107 S. E 2d 125 (1959). See also the invariably hostile reception accorde the decisions below in 42 Minn. L. Rev. 1179 (1958); 32 Tulane L Rev. 508 (1958); 3 Vil. L. Rev. 230 (1958); 45 Va. L. Rev. 4 (1959).

or organizations are subject to constitutional limitations. However, in each of these situations there was present one or more of the following three crucial elements:

1. The private body was exercising a basic state function, typically with the affirmative cooperation of the state. *Smith* v. *Allwright*, 321 U.S. 649 (running a primary political election); *Marsh* v. *Alabama*, 326 U.S. 501 (running a company town); *Terry* v. *Adams*, 345 U.S. 461 (running a preliminary primary political election).

2. The private body was invoking affirmative state action by seeking judicial enforcement or recognition of a private contract. *Shelley* v. *Kraemer*, 334 U.S. 1; *Barrows* v. *Jackson*, 346 U.S. 249.[4]

3. The private body had derived its power to act in a particular capacity or engage in a specific activity, usually monopolistic or exclusive, by virtue of a statute, and was regulated in the exercise of this power by governmental authority. *Steele* v. *Louisville & N. R. Co.*, 323 U.S. 192 (exclusive collective bargaining representative required by Congress to represent all members of a craft without discrimination); *Public Utilities Commission* v. *Pollak*, 343 U.S. 451 (public transport utility specifically permitted by governmental commission to operate radio programs); *Railway Employes' Department* v. *Hanson*, 351 U.S. 225 (exclusive collective bargaining representative expressly authorized by Congress to enter into union shop agreements otherwise invalid under state law).

None of the above bases for finding governmental action is present in this case.

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[4] Both of these cases, involving racial restrictive covenants, may also have been influenced by considerations akin to element No. 1. In effect, private parties were seeking to exercise the usually public function of "zoning" property.

1. In spending funds to promote the political and le
tive interests of itself and the employees it represe
union is not fulfilling "a basic state function." See *Wil*
v. *Yellow Cab Co.*, 200 F.2d 302, 307 (3d Cir. 1952),
den. 346 U.S. 840. It is instead exercising some of the
characteristic prerogatives of *private* persons in a
society: the expression of political views and the su
of political candidates. Indeed, this Court has suggest
the strongest terms that any attempt "to prohibit the
lication, by corporations and unions in the regular c
of conducting their affairs, of periodicals advising
members, stockholders, or customers of danger or a
tage to their interests from the adoption of measures
election to office of men, espousing such measures," w
raise the gravest constitutional questions. *United Sta*
CIO, 335 U.S. 106, 121. See also *United States* v. *Pa*
Local No. 481, 172 F.2d 854 (2d Cir. 1949); cf. *U*
States v. *UAW-CIO*, 352 U.S. 567.

2. Expenditure of union funds for political pur
does not involve state action in the enforcement of a
shop contract. The contract itself has already beer
valid by this Court in *Hanson*. And in *Hanson* the C
concern was directed toward a possible attempt to ir
"ideological conformity" through the "*exaction* of due
tiation fees, or assessments" under the contract. 351
at 238. (Emphasis supplied.) What precise use a
subsequently makes of its funds is not determined b
terms of the union shop contract whereby employee
ments are collected. That is a matter for determinati
the majority of the union membership or by duly e
officials acting under the union's governing rules. S
determination is thus wholly a matter of voluntary p
action, with no state action involved.

3. The right or power of a union to make political
ditures is neither derived from nor regulated by s

or other governmental authority. Whenever this Court has indicated that union action might be subject to constitutional limitations, the *specific activity* in which the union was engaging would have been unauthorized or prohibited but for Congressional intervention. In *Steele* the union had been authorized to enter into contracts covering the wages, hours, and working conditions of persons not members, regardless of the wishes of such persons. 323 U.S. at 199. In *Hanson* it had been authorized to enter into union shop contracts regardless of state laws to the contrary. 351 U.S. at 231-232. The appellant unions here do not rely on federal law authorizing union political activities or expenditures, because there is no such law.[5] They rely only on the right of a private organization to run its own affairs in the best interests of its membership, absent any properly applicable governmental controls.

There is of course nothing incongruous in concluding that some union activities may be subject to constitutional limitations while others are not. Although holding the union in *Steele* to the duty of nondiscriminatory representation of all employees in the craft, this Court expressly noted that "the statute does not deny to such a bargaining labor organization the right to determine eligibility to its membership." 323 U.S. at 204. In *Public Utilities Commission* v. *Pollak*, 343 U.S. 451, 462-463, this Court was careful to point out that it was not finding state action in a public transport utility's operation of a radio service merely because the public utility operated a transport monopoly under authority of Congress. To find that the specific activity of operating the radio service involved

[5] No one is contending that the conduct at issue in this case would be covered by 18 U.S.C. § 610 (§304 of the Taft-Hartley Act), which prohibits unions as such from making contributions or expenditures in federal elections (R. 232). There are no similar state laws at issue here.

state action, the Court relied on the fact that the commission had conducted an investigation and pressly permitted the operation of the radio ser nally, even when unions have been most zealousl the constitutional standards of due process in the of their statutory power as exclusive bargainin sentatives, it has been recognized that "a union tially a private organization." Murphy, J., conc *Steele*, 323 U.S. at 208.[6]

III. Any Governmental Action Involved In A Union's Funds For Political Activities Violates Neither Nor Fifth Amendments.

Assuming *arguendo* that unions can be held theory to constitutional standards in the expen funds for political purposes, we submit that ther been shown any violation of appellees' rights of fr or assembly under the First Amendment, or of th to due process under the Fifth Amendment.

A. Free Speech and Assembly Under th Amendment

There is nothing in the present record which that the unions in any way have prevented app individuals from expressing their political views supporting the political candidates of their choi

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[6] In urging that union political activities do not amou ernmental action so as to invoke constitutional prote naturally do not mean to suggest that union members a a remedy if union funds are misused for political or for purposes. In addition to state common law obligations, cials are under a statutory duty to hold a union's m property "solely for the benefit of the organization and bers," and union members are empowered to sue in feder court to enforce this duty and recover any misappli See sec. 501 of the Labor-Management Reporting and Act of 1959, 73 Stat. 535, 29 U.S.C. § 501.

inside or outside of union meetings, or through any mea
of communication. Free speech even in a government
context can mean no more than that the minority is le
wholly free to express its dissent. For the hallmark
democratic government is majority rule. And it is th
majority that has charted the unions' political cours
See *DeMille* v. *American Federation of Radio Artists*,
Cal. 2d 139, 187 P. 2d 769 (1947), *cert. den.* 333 U.S. 87
(upholding power of a union operating under a union sh
to levy assessments to oppose a right-to-work law); c
NLRB v. *A. J. Tower Co.*, 329 U.S. 324, 331. Nor do
freedom of assembly encompass the right to remain uno
ganized. *Senn* v. *Tile Layers Protective Union*, 301 U.
468. As this Court declared in *Hanson*, the union shop th
represents no more an infringement of First Amendme
rights than state laws providing for an integrated ba
351 U.S. at 238.

Appellants in their brief fully explore the relevance
the *DeMille* decision and of the numerous decisions on th
status of the integrated bar. We will not burden the Cou
with a repetition of appellants' thorough demonstratio
that no First Amendment rights are impaired in th
present instance.

B. Due Process Under the Fifth Amendment

In *Nebbia* v. *New York*, 291 U.S. 502, 525, this Cou
enunciated the principle that "the guarantee of due pro
ess • • • demands only that the law shall not be unreaso
able, arbitrary or capricious, and that the means selecte
shall have a real and substantial relation to the obje
sought to be attained." The "relevant facts" of each situ
tion determine the reasonableness of any given law
regulation. *Ibid.* To the same effect are *West Coast Hot
Co.* v. *Parrish*, 300 U.S. 379, 391; *Virginia R. Co.* v. *Sy
tem Federation No. 40*, 300 U.S. 515, 558.

Assume that a union is engaging in governme
when it spends funds on political activities, an
ject to the due process restrictions of the Fi
ment. Nonetheless, the nature of this governm
and the nature and the scope of the activities
surely can be determined only on the basis of
needs which prompted its formation.[7] As wa
political philosopher whose credentials antedate
of this Court: "A state arises out of the nee
kind."[8] To determine the proper objects of
state" or specialized government instrumentalit
are now assuming a union is, and to determine
may reasonably be selected to attain those
must look to the needs of *laboring* men.

In resolving due process questions in the fie
this Court has consistently looked to history an
to determine the reasonableness of Congressi
in meeting the needs of labor and management.
Co. v. *System Federation No. 40*, 300 U.S. 515
way Employes' Department v. *Hanson*, 351 U.
236, 239-240. In *Colgate-Palmolive-Peet Co.* v.
U.S. 355, 362-363, where the Court regarded the
provision of the Wagner Act as presenting o
question for Congress and not a constitutional i
at history led to the following comments:

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[7] Even in imposing a "fiduciary responsibility" on u
Congress recognized the necessity for "taking into
special problems and functions of a labor organizatio
501(a), Labor-Management Reporting and Disclosure
73 Stat. 535, 29 U.S.C. § 501(a). Specifically, Senato
and Kennedy made clear that the fiduciary provisio
tended to interfere with unions' political activities,
union is doing "whatever the members want to do." 1
5857 (April 23, 1959 daily ed.); 105 Cong. Rec. 164
1959 daily ed.).

[8] Plato, *The Republic*, bk. II, p. 60 (Modern Librar

"One of the oldest techniques in the art of colle
bargaining is the closed shop. It protects the inte
of the union and provides stability to labor relat
To achieve stability of labor relations was the pri
objective of Congress in enacting the National L
Relations Act. Congress knew that a closed
would interfere with freedom of employees to org
in another union and would, if used, lead inevitab
discrimination in tenure of employment. Neve
less, * * * Congress inserted the proviso of § 8 (
is not necessary for us to justify the policy of
gress. It is enough that we find it in the statute."

The attitude expressed in *Colgate-Palmolive-Pee* sumes a special relevance when we consider precisely appellees are presently asking this Court to hold. Se 2, Eleventh of the Railway Labor Act does not re unions and employers to enter into union security arra ments; it merely *permits* them to. In this respect the way Labor Act amendment authorizing the union simply is equivalent to a *pro tanto* return to the com law—where the closed shop was recognized as one o "oldest techniques in the art of collective bargaining," one which apparently posed no constitutional problem this Court. We find it astounding for appellees now t sist that, as a matter of constitutional due process, gress cannot restore the situation existing at common unless (1) Congress legislates a requirement tha monies collected under a union shop agreement be use political purposes; or (2) this Court imposes, or in e legislates, such a requirement. And if a federal st does not otherwise violate due process in restoring the mon law rule to the extent of permitting union shop a ments, we wholly fail to see how such a statute violate process simply because it supersedes conflicting state This is but the normal operation of the supremacy c of the Constitution (Article VI, clause 2).

A look at the history of union political a
abundant proof that labor's interest in polit
its interest in the closed shop or the union
vides full documentary support for legal com
have concluded that "political activity is a le
indispensable means of advancing the caus
labor";[9] that "political activities may be g
lective bargaining insofar as favorable legi
defeat of unfavorable legislation, strength
bargaining position";[10] and that unions hav
interest" in lending financial support to c
causes.[11] In a word, even a brief survey of
economic data establishes that union politi
wholly germane to a union's work in the real
bargaining, and thus a reasonable means t
union's proper object of advancing the econo
the worker. To such a survey we now tur

IV. Historical Survey And Analysis Of The Poli lative Activities Of American Labor.

A. Colonial Beginnings

American labor went into politics as early

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[9] 65 Yale L. J. 724, 733 (1956).

[10] 45 Va. L. Rev. 441, 447 (1959).

[11] 3 Vil. L. Rev. 230, 232 (1958).

[12] The classic work on American labor for the p
is Commons and Associates, *History of Labor in t*
(1918, 1935). Standard one-volume surveys are
gomery, *Organized Labor* (1945); Dulles, *La*
(1955); Rayback, *A History of American Lab*
material for our sketch of the colonial period is dr
Rayback, *supra*, c. III, "Colonial Politics: Labor
36. On the specific question of unions and politi
Karson, *American Labor Unions and Politics, 19*
Hardman and Neufeld, eds., *The House of Labor*
and Political Activity," p. 85 (1951); Bakke
Unions, Management and the Public, "Political an
p. 215 (1948).

A political organization known as the "Caucus," mostly of shipyard workers but also including sans and shopkeepers, won for a time a firm gr town offices in Boston. Severe tightening of the during the 1740s, which lowered the income of workingmen, caused the Caucus to expand its hor alliance of the Caucus and a party of debtor fa cured control of the Massachusetts General C established a land bank to provide relief through ance of paper money backed by real estate. The later destroyed by the Board of Trade.

This early incident in a sense epitomizes the labor to participate in political affairs. To p wages and his pocketbook, the worker must do bargain with his employer. He must join toge other wage earners to secure a favorable politic for advancing his economic interests. At times, in periods of business depression, this may mean direct government intervention. At all times th must realize that other powerful groups will also through organized political action to further their in opposition to his. This, too, the members of th found out.

In the middle of the eighteenth century politic designed to protect civil liberties and to further ers' demands for political equality with the privil sprang up in New York, Philadelphia, Baltimore, coastal towns.[13] These groups were generally led minded lawyers and merchants but the main body of workingmen. Such organizations prov led in the subsequent formation of the various Sons groups, which during the late '60s played a maj demonstrations against the Stamp Act, the T

[13] Rayback, *American Labor*, pp. 24-25.

Act, and other British measures viewed by
a threat to their economy and their liberty
poses it is not necessary to trace in detail h
helped counter the more conciliatory attitu
chants and landed gentry toward the repr
measures of the British Parliament, thus
for the Revolution.[14]

B. Under the New Republic

Though numerous local labor organizatio
to bargain with employers over wage scal
rules, labor played an insignificant role in
the Revolutionary War and the late 1820
1828 the Workingmen's Labor Party of Phila
the first labor party in the modern world.
outgrowth of the Philadelphia Mechanics'
Associations which had been formed the p
a result of a strike of building trades mech
hour day. When nothing but failure gr
action, the demand for the ten-hour day too
public employment plank in the political
Workingmen's Party.

In 1829 New York workers formed a
Party to protect the ten-hour day they had
tained. Compounded of Skidmore agraria
elements, the New York workers' parties r
protests against economic exploitation as
degraded citizenship, strongly condemning
sideration given in legislation to the rich th

Between 1831 and 1834 there existed in
new type of labor organization, partly poli

[14] *Id.*, pp. 32-36.
[15] Millis and Montgomery, *Organized Labor*,
and Associates, *History of Labor*, vol. I, p. 191.
[16] Commons and Associates, *supra*, vol. I, p. 232.

economic, the New England Association of Farme
chanics and Other Workmen.[17] Emerging out of
hour movement, the organization soon broade
objectives. Public education, especially of childre
factories, was assigned an importance equal to
hours of labor.

All these workers' parties had short lives. B
efforts were not unavailing. Indeed, one of the p
reasons for their decline was that other establishe
cal parties took up the causes that they ha
vigorously espoused. To these early political eff
organized workingmen has been attributed a large
the credit for the establishment of the public school
the initiation of currency reforms, the abolition
prisonment for debt, the passage of mechanics' li
and the removal from unions of the stigma of
conspiracy.[18]

In the mid-nineteenth century one of organized
primary aims was the establishment of the ten-ho
Two distinct lines of attack were followed: the fi
sisting of legislative appeals, and the second of trad
action. During the 1840s the first was most utilized
trade union demands upon employers for the ten-h
did not become prominent until the '50s.[19] As a r
numerous insistent petitions to the legislatures fro
groups and their sympathizers, various kinds of t
laws were passed in New Hampshire, Pennsylvani
Rhode Island, California, and Georgia.

C. The Rise of National Unionism

The phenomenal industrial expansion of the
States in the second half of the nineteenth century

[17] *Id.*, p. 302 ff.
[18] *Id.*, pp. 331-332; Dulles, *Labor in America*, pp. 46-50;
American Labor Unions and Politics, p. 4.
[19] Commons and Associates, *History of Labor*, vol. I, p.

increasingly clear that "labor had to meet the challenge of nationwide industry by itself organizing on a nationwide basis."[20] In 1866 delegates from various local unions, trades assemblies, and national unions met in Baltimore and organized the National Labor Union.[21] Legislative action to secure the eight-hour day was the principal aim of the NLU. Currency reform was also assigned high priority. Throughout its six-year existence, the NLU was continually engaged in lobbying activities before Congress and state legislatures for an eight-hour law. In 1868 Congress passed an eight-hour law for government employees and a law prohibiting further contraction of the currency, thus answering to a considerable extent the demands of the NLU. Eight-hour legislation was also passed in six states, but its value proved rather illusory.

After the great strikes of July 1877, in which workingmen found themselves confronted by hostile state and federal troops, numerous workingmen's political parties appeared in all the industrial centers of the nation. A Greenback-Labor Party was formed with a platform advocating currency reforms, shorter hours, national and state bureaus of labor statistics, prohibition of convict labor, and the suspension of the importation of servile labor.[22] The aggregate Greenback-Labor vote in 1878 exceeded a million, and 14 candidates were elected to Congress. Independent political action by labor nearly succeeded in electing Henry George in the New York City mayoralty election of 1886; more significantly, the strong showing made by the labor forces resulted in the state legislature's passing a considerable number of protective labor laws.[23]

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[20] Dulles, *Labor in America*, p. 99.

[21] Commons and Associates, *History of Labor*, vol. II, p. 96 ff.

[22] *Id.*, pp. 244-245.

[23] *Id.*, pp. 453-454.

In 1881 a hundred representatives of national and local unions and regional and local assemblies formed the Federation of Organized Trades and Labor Unions of the United States and Canada. This was the forerunner of the American Federation of Labor, which formally came into existence in 1886. The 1881 conference drew up a thirteen-point legislative program.[24] Almost from the outset the American Federation of Labor adopted the pattern of nonpartisan political action championed by its president, Samuel Gompers. But this meant only that the Federation would not establish an independent party or ally itself with any political party. The AFL continued to seek the election of persons sympathetic to its needs and to press for legislation favorable to the worker.[25]

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[24] *Id.*, p. 324.

[25] Taft, *The A.F. of L. in the Time of Gompers*, pp. 289-292 (1957); David, "One Hundred Years of Labor in Politics," in Hardman and Neufeld, eds., *The House of Labor*, pp. 90-98. The traditional expression of AFL policy is quoted in Bakke and Kerr, eds., *Unions, Management and the Public*, p. 215:

> "The partisanship of Labor is a partisanship of principle. The American Federation of Labor is not partisan to a political party, it is partisan to a principle, the principle of equal rights and human freedom. We, therefore, repeat: Stand faithfully by our friends and *elect* them. Oppose our enemies and *defeat* them; whether they be candidates for President, for Congress, or for other offices, whether Executive, Legislative or Judicial." (Emphasis in the original.)

Article II of the present AFL-CIO Constitution lists twelve objectives of the Federation. Two deal expressly with political activities:

> "5. To secure legislation which will safeguard and promote the principle of free collective bargaining, the rights of workers, farmers and consumers, and the security and welfare of all the people and to oppose legislation inimical to these objectives."
>
> "12. While preserving the independence of the labor movement from political control, to encourage workers to register and vote, to exercise their full rights and responsibilities of citizenship, and to perform their rightful part in the political life of the local, state and national communities."

Constitutions of national and international unions affiliated with the AFL-CIO contain analogous provisions.

At the convention of 1893 the Federation adopted political platform containing eleven planks. Among oth things the program called for compulsory education, a leg eight-hour day, government inspection of mines and wor shops, employer liability for injuries on the job, and t abolition of the sweating system.[26] The efforts of the AF together with the efforts of the Knights of Labor, t Populists, and various reform groups, were responsible f a substantial body of state labor legislation, which w enacted between 1886 and 1900.[27] This dealt primari with labor arbitration, child labor and women's labor, fa tory and mine safety, responsibility for industrial ac dents, and the eight-hour day.

D. Reaction, Progress, and Normalcy

Unionism was flourishing at the turn of the centur Then abruptly the tide changed. Between 1902 and 19 various employer groups launched a many-pronged "ma offensive" against the unions, proposing "to obliter the whole concept of an organized labor movement fro the pattern of American life."[28] Stiffening of attitudes the bargaining table and a nation-wide campaign for t "open shop" were only the beginning. The press and t academic world were systematically enlisted to convin the public that "the enormous Labor Trust is the heavie oppressor of the independent workingman": yet this appe in the name of labor's rights only "thinly disguised an al out drive against both union recognition and collecti bargaining."[29]

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[26] Commons and Associates, *History of Labor*, vol. II, pp. 50 510; Taft, *The A.F. of L. in the Time of Gompers*, p. 71 ff.

[27] Ra[illegible]back, *American Labor*, pp. 181-184.

[28] *Id.*, p. 214. See also Perlman and Taft, *History of Labor the United States, 1896-1932*, p. 129 ff. (1935); Karson, *Americ Labor Unions and Politics*, pp. 33-34; Taft, *The A.F. of L. in t Time of Gompers*, pp. 262-264.

[29] Dulles, *Labor in America*, pp. 195-196.

Spearheading the attack was the National Association of Manufacturers. In 1902 the NAM caused the defeat of labor-supported eight-hour and anti-injunction bills before Congress. And in the 1904 elections the NAM scored signal successes in its efforts "to cut off labor's influence at the source by defeating congressmen and senators favorable to labor."[30] As a final blow, the unions about this time suffered a series of crippling reverses in the courts, through the application of injunctions and the antitrust laws.[31]

In 1906 the AFL responded to the onslaught by presenting a "Bill of Grievances" to Congress and the President, protesting against the failure to enact an effective eight-hour law, the abuse of the injunction, and the perversion of antitrust laws.[32] Obtaining no satisfaction, the Federation then took more direct steps and campaigned actively to defeat labor's enemies in the elections of 1906, 1908, 1910, and 1912.[33]

These efforts bore fruit. In 1914 Congress passed the Clayton Act and supplied unions with a measure of relief against labor injunctions and the antitrust laws. A year later the AFL gained one of its long-sought objectives, a federal law granting rights and protection to seamen on vessels of American registry. And during the pre-war heyday of the progressive movement organized labor successfully supported the enactment of a vast quantity of state labor legislation.[34]

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[30] Perlman and Taft, *History of Labor*, p. 152.

[31] See Taft, *The A.F. of L. in the Time of Gompers*, pp. 266-271; Gregory, *Labor and the Law*, pp. 95-104, 205-209 (1958). On the use of injunctions against unions, see generally Frankfurter and Greene, *The Labor Injunction* (1930).

[32] Taft, *The A.F. of L. in the Time of Gompers*, pp. 294-295.

[33] *Id.*, pp. 295-298; Karson, *American Labor Unions and Politics*, pp. 44-49, 53-73; Perlman and Taft, *History of Labor*, pp. 153-154, 156-158.

[34] Rayback, *American Labor*, p. 260 ff.

The pendulum once more swung against labor
decade after the first World War. Strike after stri
lapsed because, it was said, "the power of public o
had strongly and definitely crystallized in favor of f
state and local police intervention in support of th
ployers and against the workers."[35] Organized labor'
conspicuous political move during this period was i
orous support of the independent candidacy of Rob
Follette in the presidential electio . of 1924. The mov
polled nearly five million votes, and had a significa
product: in 1926 the Congress elected in the La F
campaign enacted the Railway Labor Act.[36]

E. Depression and the New Deal

The depression which swept the country in the w
the stock-market crash of 1929 was almost immed
reflected in the elections of 1930. The new Congress,
concerned with labor welfare, studied dozens of bi
public works programs, for maximum work-hours, a
other means of federal relief.[37] In 1932 labor's fort
campaign against the indiscriminate use of the lab
junction was crowned with success through the pass
the Norris-La Guardia Act.

But the spectacular renascence of American uni
was to await the coming of the New Deal. The AF
cially maintained neutrality in the 1932 presidentia
paign; however, there is no doubt that the labor
contributed significantly to the victory of the
movement.[38]

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[35] Dulles, *Labor in America*, pp. 230-231.
[36] Rayback, *American Labor*, pp. 300-301.
[37] *Id.*, p. 319.
[38] *Id.*, pp. 321-322; Dulles, *Labor in America*, p. 263.
position of unions during this period, see generally Derb
Young, eds., *Labor and the New Deal* (1957); Schlesinge
Coming of the New Deal, pp. 385-419 (1959).

The most important single expression of the pro-labor policy generally pursued under the New Deal was the passage in 1935 of the Wagner Act, protecting workers' rights to organize and bargain collectively. The Wagner Act was passed after a measure for safeguarding labor's organizational rights had been strongly urged upon Congress by President William Green of the AFL and by other union leaders. The Chamber of Commerce, the National Association of Manufacturers, and other industry groups had opposed such a bill.[39] Labor support of the New Deal during the congressional elections of 1934 also played a role in the passage of the Wagner Act and other favorable legislation.[40] New Deal welfare measures generally supported by organized labor included the Social Security Act and public works programs.

In the 1936 campaign labor groups, especially affiliates of the newly formed Congress of Industrial Organizations, invested a total of $770,000.[41] The funds were divided among various political committees and organizations, but substantially all went to aid in the re-election of Roosevelt. Labor was continuing the traditional policy of furthering its cause by helping out its friends.

The highly publicized role played by the CIO's Political Action Committee in the 1944 campaign was partially responsible for a thorough investigation by a special Senate Committee on expenditures in the federal elections of that year. The findings were a striking refutation of any suggestion of undue union influence. Democratic and Republican organizations and committees spent a total of

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[39] Taft, *The A.F. of L. from the Death of Gompers to the Merger*, pp. 122-129 (1959).

[40] Rayback, *American Labor*, p. 333.

[41] Overacker, *Presidential Campaign Funds*, pp. 50-51 (1946).

$20,637,177.[42] Labor expenditures were ta
follows:[43]

Labor Expenditures In 1944 Federal Electi

From union contributions to CIO-PAC	$
From individual contributions to CIO-PAC..	$
National Citizens-PAC	$
Total PAC	$
Other labor groups	$
Total all labor	$

The total labor expenditure of 1.6 million dollar
both union dues and individual contribution
counted for only 7.7 percent of the total Rep
Democratic federal expenditures of 20.6 million

An even more startling revelation is that in th
elections, 242 individuals representing 64 fa
made direct contributions to political organiza
amount of $1,277,121.[44] This means that expe
behalf of many millions of workers only slight
the contributions made by 64 families.

The immediate post-war years saw a vigoro
tion of collective bargaining. Engrossed in sec
increases, unions made little effort to secure a
in the 1946 congressional elections. Only 33 m

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[42] *Report of Special Committee to Investigate Presi
Presidential and Senatorial Campaign Expenditures,*
No. 101, 79th Cong., 1st sess., P. 79 (hereinafter ci
Report). As the report indicates, the total figure of
dollars excludes the bulk of expenditures by local a
ganizations and also omits expenditures for candid
House of Representatives.

[43] Green Report, p. 23, app. IV, pp. 102-121.

[44] *Id.*, app. VIII, pp. 140-151.

and labor was dealt its worst defeat since the inaugur
of the New Deal.[45] A year later the full dimensio
labor's political setback were revealed by the passage
Taft-Hartley Act. The new Act followed in large d
the suggestions of the National Association of Man
turers—which later reported it had spent over 4 m
dollars during 1947 in what appear to be propag
connected activities.[46]

F. The Contemporary Scene

The enactment of the Taft-Hartley law spurred the
on to renewed political activity, and led to the creati
Labor's League for Political Education.[47] An inte
campaign by the League and the CIO-PAC brought ou
labor vote in unprecedented numbers in 1948, assisti
the surprise re-election of President Truman. But
failed to achieve its primary purpose of repealing the
Hartley Act.

In 1952 the AFL formally endorsed the presidential
didacy of Adlai E. Stevenson. In announcing its sup
the Federation cited the need to replace the Taft-Ha
Act, to develop a public low-rent housing program, t
tend social security, and to establish a health insu
program. The CIO also endorsed Stevenson in 1952.
endorsement was repeated in 1956 by the newly m
AFL-CIO. Labor generally had found unsatisfactor
record of the Eisenhower administration on unemploy
taxes, housing, federal aid to education, and fiscal

[45] Rayback, *American Labor*, p. 395 ff.
[46] *Id.*, p. 398; Cong. Q. Reports, p. 268 (1948).
[47] Taft, *The A.F. of L. from the Death of Gompers to the M*
p. 311 ff. See also Kallenbach, "The Taft-Hartley Act and
Political Contributions and Expenditure," 33 Minn. L. R
(1948); Chang, "Labor Political Action and the Taft-H
Act," 33 Neb. L. Rev. 554 (1954); Laidler, "Labor's Role in
ican Politics," 36 Current History 321 (June 1959).

monetary measures. Redress once again wa
polls.

Political contributions and expenditures
1956 gene al election campaigns were subj
comprehensive Senatorial study.[48] Tabul
findings follow:

Direct Political Expenditures in 1956 E

	Amount
Republican	$20,685,38
Democratic	$10,977,79
Labor	$ 941,27
Miscellaneous	$ 581,27
Totals	$33,185,72

Individual and Group Contributio of $500 or More in 1956 Election

Of Twelve Selected Families to:

Republicans	
Democrats	
Other	
Total	

Of Officials of 225 Largest Corporations to:

Republicans	
Democrats	
Other	
Total	

[48] See *Report of Senate Subcommittee on Pri tions to Committee on Rules and Administratio Election Campaigns*, 85th Cong., 1st sess. (1957)

[49] For convenience the tabulations are drawn Almanac, pp. 187-189 (1957).

Of Officials of 13 Professional, Business, and Similar Groups to:

Republicans	$
Democrats	$
Other	$
Total	$

Of National and International Union Officials to:

Democrats	$
Republicans	$
Total	$

Of Labor Groups to:

Democrats	$1,
Republicans	$
Total	$1,

As can be seen, the political contributions of dozen families of means exceeded the total direct p expenditures by workers during the 1956 campa labor's direct expenditures are added to its politi tributions, the total still barely exceeds 2 million This is almost entirely offset just by the contribut the officials of the 225 largest corporations. And t labor outlay of 2 million dollars was merely 6.4 pe the 31.7 million dollars spent by the Republican and cratic parties and their candidates in the 1956 When it is considered that twelve families in the States are capable of bringing to bear in an electi paign well over half as much money as organize which represents 16 million workingmen and their f some idea may be grasped of the magnitude of t faced by workers in presenting their views to the pu

was sought at the

s relating to the
bjected to a most
ulations[49] of the

Elections

nt	Percent
387	62.3
790	33.1
271	2.8
277	1.8
,725	100

ations
ions

	$1,040,526
	$ 107,109
	$ 6,100
	$1,153,735

to:

	$1,81[illegible],797
	$ 103,725
	$ 16,525
	$1,936,847

Privileges and Elec-
tration: 1956 General
1957).
drawn from Cong. Q

in seeking the election of persons sym
interests.

Labor today must attempt to operate wi
sure groups with opposing interests exper
amounts to achieve their purposes throug
For example, between 1947 and 1950, Gen
more than 4.5 million dollars to tax-exemp
ganizations and trade associations.[50] T
American Medical Association undertook
million dollar "political war chest" in it
paign to defeat the Truman medical ins
which was favored by organized labor.[51] I
year of 1954 over 2 million dollars of th
went for a "public information progra
times employers and employer-minded gr
fluence over the media of mass communi
matched by the workingman.[53] By cont
crucial fiscal year preceding the passage
posed Landrum-Griffin bill in 1959, whic
period of nation-wide efforts to enact stat
laws, the AFL-CIO's Legislative Depa rtm
mittee on Political Education together spe
1.15 million dollars.[54]

G: Analysis

The preceding historical sketch provi
demonstration that political and legislat

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[50] *Report on Expenditures by Corporations t*
tion, H. Rep. No. 3137, 81st Cong., 2d sess.;
p. 763 (1950).

[51] Hyde and Wolff, "The American Medical A
Purpose and Politics in Organized Medicine,"
1012 (1954).

[52] Key, *Politics, Parties, and Pressure Group*

[53] See, e.g., Chase, *Sound and Fury*, pp. 128-1
sion on Freedom of the Press, *A Free and*
(1947).

[54] AFL-CIO, *Report of the Executive Counc*

essential part of any realistic effort by workers t
and maintain their bargaining position, and to
atmosphere favorable to their general economic
advancement. But we need not rely upon our own
tation of the data available. A host of disinteres
economists stand ready to verify this conclusion.[5]

Professor Lloyd G. Reynolds of Yale sums up t
in this way:

> "It is often debated whether unions shoul
> politics'; really, they have no choice in th
> They are automatically in politics because
> under a legal and political system which
> generally critical of union activities. The c
> suit and the injunction judge have been a pr
> unions from earliest times. A minimum of
> activity is essential in order that unions ma
> to engage in collective bargaining on even t

In addition to emphasizing that labor cannot ev
effectively in collective bargaining without
amount of political action, Reynolds discusses
practical reasons for labor political activity. Fir
objectives in which labor has an interest cannot b
at all through collective bargaining. These inclu
education, social insurance of various kinds,
housing, and effective anti-depression measures.
certain objectives which might be achieved throu
tive bargaining can be achieved much faster thro
lation. This category embraces legislation cove
num wages, maximum hours, and the eliminatio

[5] In addition to the authorities discussed in the
economists stressing the need for union political act
Sturmthal, "Pressure Group or Political Action," and
"Labor Parties in the United States," in Bakke and
Unions, Management and the Public, pp. 215-218, 218

[6] Reynolds, *Labor Economics and Labor Relations*,
(1959):

labor. Reynolds assigns prime responsibility for the progress of social legislation to the "increasing political awareness of trade unions."[57] At the same time, however, he concludes that the increase in the political influence of organized labor has been offset by a simultaneous increase in lobbying by groups directly opposed to labor. The net result is that the workers' political power "is still not very great vis-à-vis other groups."[58]

Two other scholars, Daugherty of Northwestern and Parrish of Illinois, give as the reason for unionists' interest in politics their recognition of "their inability to cope with anti-union employers on equal terms on the economic field, [and] * * * their inability to protect their members against the vicissitudes of depression," together with their discovery of "what a great difference a favorable government made in their fortunes."[59]

Princeton economist Richard A. Lester even defines a labor union in political terms, stating that it is "a political organization representing the members' job interests and their viewpoints on political and social issues."[60] He emphasizes that unions "perform educational functions and help to reconcile conflicts of interest," and so serve "a beneficial role in a democratic society."[61]

CONCLUSION

We submit that there is no constitutional question in this case because there is no governmental action involved in a union's use of its funds for political activities. At the very most we find "questions not of constitutional validity but of policy in a domain of legislation peculiarly open to con-

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[57] *Id.*, p. 328.
[58] *Id.*, p. 82.
[59] Daugherty and Parrish, *Labor Problems of American Society*, p. 408 (1952).
[60] Lester, *As Unions Mature*, p. 14 (1958).
[61] *Id.*, p. 20.

flicting views of policy." Frankfurter, J., concurring in *Railway Employes' Department* v. *Hanson*, 351 U.S. 225, 239. If Congress in permitting the union shop in the railroad industry has somehow tinged union political spending with a trace of governmental color, then we say: a wealth of historical and economic data nevertheless establishes that such spending, under the circumstances, is not unreasonable or arbitrary, but rather a means having a real and substantial relation to the economic advancement of the worker via stable collective bargaining. There is thus no violation of constitutional due process.

For the foregoing reasons and for the reasons stated in the brief for appellants, the judgment of the Supreme Court of Georgia should be reversed and the case remanded to that Court, with instructions to reverse the judgment of the Superior Court of Bibb County with remittitur to the Superior Court directing it to vacate its judgment and order of December 8, 1958 and to dismiss the case.

Respectfully submitted,

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February 1960